

**United States Department of the Interior
Bureau of Reclamation**

DRAFT CONCESSION CONTRACT

(Description of Services Types)

at

(Area Unit Name)

(Name of Concessionaire)

Reclamation's Concession Contract No. _____

(Address, including E-mail address and phone number)

Doing Business As: _____

Covering the Period _____ **through** _____

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Special Note to this Draft Concession Contract: This Draft Concession Contract should be viewed by all offerors as a 'Template' of what a final contract will be. It will include all of these sections and the same general wording. It is not possible for this contract to be more complete because of the flexible nature of the proposal process in this prospectus. Offerors will identify a proposed business plan that includes number and type of facilities and programs to be provided. Once Reclamation makes a selection of a successful offeror or offerors a contract using this format and much exact wording will be finalized by Reclamation prior to execution. Reclamation will have the final determination on any points of disagreement in finalizing the Concession Contract and if the selected offeror determines they can not fulfill the terms of the eventual contract then Reclamation may select the next best offeror or may re-advertise the concession opportunity with another prospectus. All offerors should be familiar with this contract template as it applies to their unique proposal. This Draft Contract and the associated Contract Exhibits (Exhibit A through Exhibit O) have 'Terms and Conditions' and Standards of Operation that will be present in an eventual final contract and offerors should evaluate them in regard to the applicable parts of their proposal to this prospectus.

IDENTIFICATION OF THE PARTIES

(Corporation)

THIS concession contract is made and entered into by and between the United States of America, acting in this matter by Reclamation, through the regional director of the Mid Pacific Region, Bureau of Reclamation, hereinafter "Reclamation," and the _____, a corporation organized and existing under the laws of the State of _____, doing business as _____, hereinafter referred to as the "concessionaire."

(Partnership)

THIS concession contract is made and entered into by and between the United States of America, acting in this matter through the Regional Director of the Mid Pacific Region of the Bureau of Reclamation, hereinafter "Reclamation," and _____ of _____ and _____ of _____, partners doing business as _____, pursuant to a partnership agreement dated _____, a partnership organized under the laws of the State of _____, hereinafter referred to as the "concessionaire."

(Sole Proprietorship)

THIS concession contract is made and entered into by and between the United States of America, acting in this matter through the regional director of the Mid Pacific Region of the Bureau of Reclamation, hereinafter "Reclamation," and _____, an individual of _____, doing business as _____, hereinafter referred to as the "concessionaire."

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WITNESSETH

THAT WHEREAS, _____, Lake Berryessa hereinafter referred to as the “(Name of Concession Area) Concession Area” is administered by Reclamation as a unit of the Bureau of Reclamation (Reclamation).

WHEREAS, to accomplish these purposes, Reclamation has determined that certain facilities and services are necessary and appropriate for the public use and enjoyment of the (Name of Concession Area) Concession Area, as determined from established planning criteria, and shall be provided for the public visiting the (Name of Concession Area) Concession Area; and

WHEREAS, Reclamation has exercised authority, allowing a reasonable opportunity by the concessionaire to realize a profit on the operations conducted as a whole, commensurate with the capital invested and the obligations assumed; and

WHEREAS, these purposes will not be inconsistent with the requirements of the project and will not interfere with the operation and responsibility of any and all entities associated with the project and identified by Reclamation; and

WHEREAS, Reclamation desires the concessionaire to establish and operate these visitor services at reasonable rates under the supervision and regulation of Reclamation; and

WHEREAS, Reclamation desires the concessionaire to conduct these visitor services in a manner that demonstrates sound environmental management, stewardship, and leadership;

NOW, THEREFORE, pursuant to the authority contained in the Reclamation Act of 1902, as amended and supplemented; the Reclamation Project Act of 1939; the Federal Water Projects Recreation Act of 1965, as amended; and other laws that supplement and amend the acts, including Reclamation’s Concession Management Policy, Directives and Standards, and Guidelines, Reclamation and the concessionaire agree as follows:

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DEFINITIONS

The following terms used in this concession contract and the exhibits to this concession contract will be defined, for the purposes of this concession contract and exhibits, as set forth below. Definitions apply to both the singular and the plural forms of the defined terms. As regards this contract and associated exhibits, these definitions supersede any others found elsewhere:

Actual cash value – The cost of repairing or restoring the damaged property or replacing it with property of like kind and quality in the same physical condition. A commonly used formula is replacement cost less depreciation.

Additional insured – A person or organization, other than the named insured, who is protected by the terms of the insurance policy.

Agreed amount or agreed value – A provision in an insurance policy whereby the policyholder agrees to carry a specified amount of insurance under penalty of being a coinsurer for the deficit, used in lieu of coinsurance in certain policies.

Aggregate limits – Under a liability in an insurance policy, the maximum dollar amount the insurance company will pay during the policy year regardless of the number of occurrences. (See General aggregate limits.)

All risks – An insurance policy that covers losses caused by any peril that is not excluded, as opposed to “named peril” policies that protect only against certain perils named in the policy.

Annual Improvement Management Plan – A written document presenting a management plan for all real property improvements, including construction, repair, and maintenance projects to be undertaken by the concessionaire during the following calendar year after the final submittal date.

Annual Occupancy – Refers to the use of cabins, cottages, or park models at specific concession locations for a term of 1 year with the option to renew for not more than two consecutive 1-year terms contingent upon compliance with the terms and conditions of the permit and other applicable requirements. Facilities shall not be used as a primary residence. Actual use shall be limited to a maximum of 90 consecutive days and no more than 6 months total per year. All cabins, cottages, and park models at Lake Berryessa must be constructed or installed, operated, and maintained by contractors and shall not be privately owned by individuals. Any facilities designated for annual occupancy must be no closer to the 455 mean sea level demarcation than 100 linear feet.

Applicable laws – The laws of the Congress governing Lake Berryessa, including, but not limited to, the rules, regulations, requirements, and policies promulgated under those laws, whether now in force, or amended, enacted or promulgated in the future, including, but not limited to, Federal, State, and local laws, rules, regulations, codes, requirements, and policies governing nondiscrimination, protection of the environment, protection of

public health and safety, zoning laws and ordinances, securities and exchange laws, and tax laws.

Approved project documents – Project drawings and specifications approved by the area manager and use by the concessionaire to direct a contractor in the type, size, and quality of projects.

Arbitration – All arbitration proceedings conducted under the authority of this concession contract will use the following procedures unless otherwise agreed by the concessionaire and Reclamation. One member of the arbitration panel will be selected by the concessionaire, one member will be selected by Reclamation, and the third (neutral) panel member will be selected by the two party-appointed members. The expenses of the neutral arbiter and other associated common costs of the arbitration will be borne equally by the concessionaire and Reclamation. The arbitration panel will adopt procedures that treat each party equally, give each party the opportunity to be heard, and give each party a fair opportunity to present its case. Determinations must be made by a majority of the members of the panel and will be nonbinding on the concessionaire and Reclamation. If either party disagrees with the arbiter's recommendation, he or she may file an appeal with Reclamation under 43 Code of Federal Regulations (CFR), Part 4, Subpart G. However, the final, binding, and non-challengeable determination shall be made by Reclamation.

Area manager – The manager of Central California Area Office or the duly appointed Bureau of Reclamation official.

Area of operation or area – Each contract will authorize and define only the physical area necessary to conduct the business activities allowed by the contract. The contract must include a legal description and a detailed map. Concession boundaries will be surveyed by Reclamation and must be easy to recognize by the visiting public. **[NOTE: Complete the definition by adding the name of the area.]**

Best Management Practices – Policies and practices that apply the most current and advanced means and technologies available to the concessionaire to undertake and maintain a superior level of environmental performance reasonable in light of the circumstances of the operations conducted under this concession contract. Best Management Practices are expected to change from time to time as technology evolves.

Blanket basis – This refers to a property insurance policy that extends over more than one unit or one type of property in one location. A single blanket basis policy can cover two or more types of property in one location, one type of property in two or more locations, or two or more types of property in two or more locations.

Builders' risk – Indemnifies an insured for loss or damage to a building under construction. Insurance applies only during construction; a permanent policy must be written upon completion, at which time the builders' risk policy is canceled pro rata.

Business interruption – A form of indirect damage coverage under property insurance policies that protects against loss of income. Under some types of policies, such as boiler and

machinery, the coverage is called “Use and Occupancy.” Business Interruption insurance is consequential loss coverage; that is, the loss results from or is a consequence of a direct loss.

Capital improvement – Defined as a structure, fixture, or non-removable equipment provided by the concessionaire pursuant to the terms of this concession contract and located on lands of the United States within the area. A capital improvement does not include any interest in land. Additionally, a capital improvement does not include any interest in personal property of any kind including, but not limited to, vehicles, boats, barges, trailers, or other objects, regardless of size, unless an item of personal property becomes a fixture as defined in concession contract. A capital improvement is considered to be a real property improvement for the purposes of this concession contract.

Capital investment recovery (CIR) – Shall have the meaning set forth in this concession contract and in exhibit C.

Capital investment recovery value – Shall have the meaning set forth in this concession contract and in exhibit C.

Change order – A written agreement between the construction supervisor and the contractor or consultant that changes the concession construction or improvement contract documents or scope of project work as agreed upon contractually.

Construction cost – Construction cost means the total of the incurred eligible direct and indirect costs necessary for constructing or installing the capital improvements that are capitalized by the concessionaire in accordance with generally accepted accounting principles (GAAP).

Construction supervisor – A concessionaire employee designated to administer and coordinate projects, ensuring the quality of work and compliance with project design specifications.

Consumer Price Index (CPI) – The national “Consumer Price Index for All Urban Consumers” published by the U.S. Department of Labor, Bureau of Labor Statistics. If this index ceases to be published, Reclamation will designate another regularly published cost-of-living index approximating the national CPI.

Contact person – A concessionaire employee designated as the person to contact regarding a specific matter, concern, or issue.

Cooperating association – A nonprofit organization with a Federal 501 (c) tax-exempt entity status incorporated within the State in which it operates and governed by a volunteer board of directors. Cooperating associations assist in enhancing interpretive programs, providing visitor information, funding research, and supporting various resource themes.

Day or days – Shall mean calendar days.

Deductible plan – A plan designed to have the insurance policyholder participate in the loss. The amount that the insured must pay is indicated in the policy. The insurance company usually pays the entire claim and presents a bill to the insured for the deductible amount.

Depreciation – The allocation of the cost of an asset over time for accounting or tax purposes to account for the decline in the value of an asset due to wear and tear or obsolescence. The method for calculating depreciation may conform to generally accepted accounting principles (GAAP) or the Internal Revenue Service (IRS) requirements, whichever is appropriate to the application.

Direct damage – The actual physical damage or destruction of the insured property from fire or other insured peril. Direct damage extends to include damage when the insured peril is the proximate cause of the loss. For the proximate cause rule to apply, there must be no intervening new and independent cause of damage between the fire and the loss. Direct damage differs from consequential loss, which stems only indirectly from a fire or other disaster.

Eligible direct cost – The sum of all incurred costs (in amounts no higher than those prevailing in the locality of the project), that are necessary for the construction of a capital improvement and are typically elements of a construction contract. Eligible direct costs may include, but are not limited to, the costs of (in amounts no higher than those prevailing in the locality of the project) building permits; materials, products, and equipment used in construction; labor used in construction; security during construction; a contractor's shack and temporary fencing; material storage facilities; power line installation and utility costs during construction; performance bonds; and a contractor's (and a subcontractor's) profit and overhead (including job supervision; worker's compensation insurance; and fire, liability, and unemployment insurance).

Eligible indirect cost – Except as provided in the last sentence of this definition, the sum of all other incurred costs (in amounts no higher than those prevailing in the locality of the project) necessary for the construction of a capital improvement. Eligible indirect costs may include, but are not limited to, the costs of (in amounts no higher than those prevailing in the locality of the project) architectural and engineering fees for plans and plan checks; surveys to establish building lines and grades; environmental studies; the points, fees, or service charges and interest on construction loans (if the project is financed); and all risk insurance expenses and ad valorem taxes during construction. The actual administrative expenses (in amounts no higher than those prevailing in the locality of the project) are eligible indirect costs. Other administrative expenses of the concessionaire are not eligible indirect costs.

Excess liability policy – Provides coverage in an amount above a specific primary liability insurance policy. It follows the identical form of the basic policy, including all exclusions.

Exhibit or exhibits – Shall mean the various exhibits that are attached to this concession contract, each of which is hereby made a part of this concession contract.

Federal estate – Is the Federal land and water areas under the primary jurisdiction of the Department of the Interior, Bureau of Reclamation.

Fair Value – A term used in PL 96-375 that identifies the type of compensation that concessionaires will receive for any of their applicable assets identified to remain into the next contract term. Reclamation Solicitors and Appraisers have determined that the term ‘Fair Value’ is to mean the same as ‘Fair Market Value’.

Fixed assets – Any structures, fixtures, or capital improvements permanently attached to the Federal estate.

Fixtures and non-removable equipment – Manufactured items of property of an independent form and utility, necessary for the basic functioning of a structure, that are affixed to and considered to be part of the structure as real property once installed. Fixtures and non-removable equipment do not include building materials (e.g., wallboards, flooring, concrete, cinder blocks, steel beams, studs, window frames, windows, rafters, roofing, framing, siding, lumber, insulation, wallpaper, and paint). Because of their special circumstances, floating docks (but not other types of floating property) that may be constructed by the concessionaire pursuant to the terms of this concession contract are considered to be non-removable equipment for CIR purposes only. Except as otherwise indicated in exhibit C the term “fixture” includes the term “non-removable equipment.”

Franchise fee – A franchise fee is a payment to the Government that is considered a direct return to the Government upon consideration of the probable value to the concessionaire of the use, rights, and privileges granted by this concession contract. Such probable value shall be based upon a reasonable opportunity for net profit in relation to capital invested and the obligations of this concession contract.

General aggregate limits – The maximum amount the insurance policy will pay for the sum of damages for medical expenses, bodily injury, and property damage arising out of all claims other than product/completed operations.

Gross receipts – The total amount received or realized by, or accruing to, the concessionaire from all sales for cash or credit, of services, accommodations, materials, and other merchandise made pursuant to the rights granted by this concession contract, commissions earned on contracts or agreements with other persons or companies operating in the area, and gross receipts earned from electronic media sales, but excluding:

- Intra-company earnings on account of charges to other departments of the operation (such as laundry).
- Charges for employees’ meals, lodging, and transportation.
- Cash discounts on purchases.
- Cash discounts on sales.

- Interest on money loaned or in bank accounts.
- Income from investments.
- Income from subsidiary companies outside the area.
- Sale of property other than that purchased in the regular course of business for the purpose of resale.
- Sales and excise taxes that are added as separate charges to sales prices, gasoline taxes, fishing license fees, and postage stamps, provided that the amount excluded shall not exceed the amount actually due or paid Government agencies.

All monies paid into coin-operated devices, except telephones, whether provided by the concessionaire or by others, shall be included in gross receipts. However, only revenues actually received by the concessionaire from coin-operated telephones shall be included in gross receipts. All revenues received from charges for in-room telephone or computer access shall be included in gross receipts.

Immediate or immediately – To occur at once and as soon as possible, unless otherwise specified in this concession contract.

Imminent danger – Defined as a condition or practice with potential for loss of life or body part, permanent disability, and/or extensive loss of structure, equipment, or material.

Improvements – An addition to real property that increases its value or utility or that enhances its appearance.

Licensed contractor – An entity performing construction certified or licensed by the State to perform construction services within that State.

Loss payable clause – A condition of an insurance policy whereby the company is directed by the insured to pay to some other person designated in the policy any loss that may be due (usually a mortgage).

Non-serious hazard – Defined as a condition or practice with potential for minor non-disabling injury or illness or non-disruptive property damage. An example is a minor tripping hazard.

Open peril – Property insurance that applies to risks of loss on a general basis, in contrast with policies that provide coverage for specifically identified perils.

Project coordinator – A concession employee vested with the authority to direct consultants and contractors in the expenditure of the reserve account for facilities improvement (RAFI) funds.

Project statement – An agreement between Reclamation and the concessionaire approved by the area manager that authorizes the development and implementation of individual projects identified in an Annual Improvement Management Plan as set forth in exhibit H of this concession contract.

Property replacement value – Reclamation-approved value for replacement cost of property.

Real property improvements – Real property other than land, including, but not limited to, capital improvements.

Reclamation improvements – Shall have the meaning set forth in section 4 of this concession contract.

Registered technical professionals – Architects, engineers, or any subject area expert either certified or licensed by the State to perform specialized services or certified by a widely recognized industry regulator held responsible for quality and standard application of technical subject matter.

Related capital improvement or related fixture – A capital improvement in which the concessionaire has a CIR.

Replacement cost – The estimated cost to reconstruct, at current prices, an existing structure with utilities equivalent to the existing structure, using modern materials and current standards, design, and layout.

Replacement cost insurance – Insurance that pays the cost to restore or replace the damaged or destroyed property without deduction for depreciation. However, for the insured to collect on this basis, he/she is usually required to actually repair or replace the damaged or destroyed structure.

Secretary – A Federal employee, acting on behalf of the Secretary of the Interior and the United States, and Reclamation's duly authorized representatives.

Self-assumption – Refers to the assumption of risk of damage by having a definite funding plan for meeting losses.

Serious hazard – A condition or practice with potential for serious injury or illness resulting in temporary disability or property damage that is disruptive but less severe than imminent danger. An example is an open trench in front of a public area.

Structure – A building, dock, or similar edifice affixed to the land so as to be part of the real estate. A structure may include both constructed infrastructure (e.g., water, power, and sewer lines) and constructed site improvements (e.g., paved roads, retaining walls, sidewalks, paved driveways, and paved parking areas) that are permanently affixed to the land so as to be part of the real estate and that are in direct support of the use of a building, dock, or similar edifice. Landscaping that is integral to the construction of a structure is considered as part of a structure. Interior furnishings that are not fixtures are not part of a structure.

Substantial completion of a capital improvement or substantial completion – The condition of a capital improvement construction project when the project is substantially complete and ready for use and/or occupancy as set forth in exhibit H of this concession contract.

Straight-line depreciation – The method for calculating the depreciation of an asset, which assumes the asset will lose an equal amount of value each year over the economic life of the asset. For the purpose of calculating CIR, the assumed economic life of the asset shall equal the economic life for the asset type stipulated by the IRS for the purposes of tax calculation using the straight-line depreciation method.

Surplus line – Commonly used to describe any risk or part thereof for which there was no market available to the original broker or agent. Surplus line companies, sometimes called non-admitted companies, will, however, be regulated to some degree by the laws of the State they operate in. Often, their policies are not supported by the State guarantee fund available to “admitted” companies.

Total project cost – The total of all actual project expenditures (invoiced and paid) for completion of a project.

Project price – The total of all estimated project expenditures for completion of a project.

Umbrella liability insurance – A form of liability insurance protecting policyholders from claims in excess of the limits of their primary automobile liability, general liability, and employer’s liability policies and from many claims not covered by the primary policies. This is catastrophic insurance and requires a complete program of underlying insurance.

Wastewater – Any liquid waste, whether treated or not, and whether animal, mineral, vegetable, including agricultural, industrial, and thermal wastes.

Vacancy – The absence of both people and furnishings or contents of a building.

Visitor services – The accommodations, facilities, and services that this concession contract requires or authorizes the concessionaire to provide.

SECTION 1 – TERM OF CONCESSION CONTRACT

A. TERM OF CONCESSION CONTRACT

This concession contract No. _____, herein and hereafter referred to as the “concession contract,” shall be effective as of _____ 20____, and shall be for the term of ____ years until its expiration on _____, 20 ____ pending the concessionaires satisfactory completion of the Concessions Facilities Improvement Program (CFIP) described in section 4G of this concession contract. However if the concessionaire fails to complete this CFIP program to the satisfaction of Reclamation within the time specified, this concession contract shall be for the alternate term of ____ years until the expiration on _____, 20____, hereinafter referred to as the “alternate term.” Reclamation may extend this shortened, alternate term (but not beyond the original date of expiration of this concession contract) in circumstances where Reclamation determines that the delay resulted from events beyond the control of the concessionaire.

[Note: Reclamation will complete this section after selection of a successful offeror and in relation to the particulars of the successful unique proposal.]

B. CONCESSION CONTRACT TERMINATION

Reclamation may terminate this concession contract at any time, in whole or in part, to protect visitors to the (Name of Concession Area) Concession Area or to protect, conserve, and preserve resources in the (Name of Concession Area) Concession Area.

Reclamation may terminate this concession contract if Reclamation determines that the concessionaire has materially breached any requirement of this concession contract. The contract includes the requirement to:

- Maintain and operate visitor services to the satisfaction of Reclamation.
- Provide only those visitor services required by Reclamation pursuant to this concession contract.
- Implement the Maintenance Plan.
- Implement the Operating Plan.
- Pay the established franchise fee.
- Pay into the reserve account for facilities improvement (RAFI) as agreed.
- Prepare and comply with an Environmental Management Program (EMP).
- Prepare and comply with a Risk Management Program (RMP).

- Expend funds from the RAFI in an appropriate and timely manner.
- Comply with applicable laws.
- Apply the conditions of the contract when assigning, selling, or transferring responsibilities of this concession contract to a third party.
- **ONLY if the new concessionaire is one of the existing seven (7) concessionaires the area that was formerly under his/her assignment including; Markley Cove, Pleasure Cove, Steele Park, Spanish Flat, Lake Berryessa Marina, Rancho Monticello and Putah Creek:**
The concession area known as (name of current concession operation, i.e. Putah Creek, Rancho Monticello, etc.) is properly prepared for the introduction of the new concession operation including removal of any and all concession facilities that will not be used (as directed by Reclamation) in the new operation and the removal of all private trailers that were assigned a site under a permit from the former concessionaire. The removal of both private trailers and the associated installations must be accomplished no later than the final day of the respective current contracts. Proper preparation also includes efforts resulting in a return to ‘as near as natural condition as possible’ of the areas formerly utilized and impacted by concession and trailer permittee facilities including but not limited to landscaping, infrastructure, retaining walls, and any other efforts at shoreline stabilization but no longer determined to be necessary for this contract.

SPECIAL NOTE TO CURRENT CONCESSIONAIRES: The preceding bulleted item does not apply to offerors that are not current concessionaires at Lake Berryessa. It is the responsibility of the current concessionaires to assure that their presently assigned area is ready for occupancy for the next contract term by the end of their current contract. And in the case of Markley Cove and Steele Park, other conditions may apply in their individual contracts. However, in all concession areas, enforcement of all the terms and conditions in their individual agreements with long-term trailer site permittees including the need to provide adequate notification to vacate their site by the last day of the current concession contracts is required. If a current concessionaire submits a proposal in response to this prospectus and is selected as a successful offeror but fails to accomplish these responsibilities, Reclamation will make a finding of non-responsiveness on existing contractual obligations, will not proceed with the new contract execution and will select another satisfactory offeror or may re-issue the prospectus for any particular location.

In addition, the concession contract will be subject to termination pursuant to the conditions set forth in Exhibit G: Operating Plan. Reclamation shall reserve the right to collect penalties and administrative costs and shall terminate this concession contract for default and for nonperformance.

In the event of a breach of this concession contract, Reclamation will provide the concessionaire an opportunity to cure by providing written notice to the concessionaire of

the breach. In the event of a monetary breach, Reclamation will give the concessionaire a 15 day period to cure the breach. If the breach is not cured within that period, Reclamation may terminate this concession contract for default. In the event of a non-monetary breach, if Reclamation considers that the nature of the breach so permits, Reclamation will give the concessionaire 30 days to cure the breach or to prepare a plan to cure the breach that is approved by the area office and 30 days to implement the plan over a period of time. If the breach is not cured within this specified period of time, Reclamation may terminate this concession contract for default. Notwithstanding this provision, repeated breaches (two or more) of the same nature shall be grounds for termination for default without a cure period. In the event of a breach of any nature, Reclamation may suspend the concessionaire's operations, as appropriate. This concession contract is subject to 43 Code of Federal Regulations (CFR) Part 4, Office of the Secretary of the Interior, Department of Hearings and Appeals Procedures, in the event of a default.

Reclamation may terminate this concession contract upon the filing or the execution of a petition in bankruptcy by or against the concessionaire; a petition seeking relief of the same or a different kind under any provision of the Bankruptcy Act or its successor; an assignment by the concessionaire for the benefit of creditors; a petition or other proceeding against the concessionaire for the appointment of a trustee, receiver, or liquidator; or the taking by any person or entity of the rights granted by this concession contract or any part thereof upon execution, attachment, or other process of law or equity. Reclamation may terminate this concession contract if Reclamation determines that the concessionaire is unable to perform the terms of the concession contract because of bankruptcy or insolvency. Termination of this concession contract for any reason shall be by written notice to the concessionaire.

At the discretion of Reclamation, a surety or performance bond by the concessionaire may be requested at any time.

C. NOTICE OF BANKRUPTCY OR INSOLVENCY

The concessionaire must give Reclamation immediate notice (within 5 days) after the filing of any petition in bankruptcy, filing any petition seeking relief of the same or different kind under any provision of the Bankruptcy Act or its successor, or making any assignment for the benefit of creditors. The concessionaire must also give Reclamation immediate notice of any petition or other proceeding against the concessionaire for the appointment of a trustee, receiver, or liquidator, or the taking by any person or entity of the rights granted by this concession contract or any part thereof upon execution, attachment, or other process of law or equity. For purposes of the bankruptcy statutes, Reclamation considers that this concession contract is not a lease but an executory contract exempt from inclusion in assets of the concessionaire pursuant to 11 United States Code (U.S.C.) 365.

D. REQUIREMENTS IN THE EVENT OF TERMINATION OR EXPIRATION

In the event of termination of this concession contract for bankruptcy, nonperformance, default, or for any reason, or expiration of this concession contract, the total compensation due the concessionaire for such termination or expiration shall be as described in this section and in section 5 of this contract. No other compensation of any nature shall be due the concessionaire in the event of a termination or expiration of this concession contract, including, but not limited to, compensation for losses based on lost income, profit, or the necessity to make expenditures as a result of the termination, bankruptcy, or expiration.

Upon bankruptcy or termination of this concession contract for any reason, or upon its expiration, and except as otherwise provided in this section, the concessionaire shall, at the concessionaire's expense, promptly vacate the area, remove all the concessionaire's personal property, repair any injury occasioned by installation or removal of such property, and ensure that concession facilities are in at least as good condition as they were at the beginning of the term of this concession contract, reasonable wear and tear excepted. The removal of such personal property must occur within 30 days after the termination of this concession contract for bankruptcy or termination for any reason, unless Reclamation, in particular circumstances, requires immediate removal. At the end of 30 days, if the subject property is not removed, it will be considered abandoned property and may become the property of the United States Government or removed by the Government. The concessionaire will be billed and be held responsible for all costs of removal. In the instance of a regularly scheduled expiration the concessionaire will have all personal property and all restoration accomplished, at the concessionaires expense, in advance of the last day of the contract.

To avoid interruption of services to the public upon bankruptcy or termination of this concession contract for any reason, or upon its expiration, the concessionaire, upon the request of Reclamation, shall consent to the use, by another operator, of the concessionaire's personal property, excluding inventories, if any, not including current or intangible assets, for a period of time not to exceed 1 year from the date of such termination or expiration. The other operator shall pay the concessionaire an annual fee for use of such property, prorated for the period of use, in the amount of the annual depreciation of such property, plus a return on the book value of such property equal to the prime lending rate, as published by the Federal Reserve System Board of Governors, effective on the date the operator assumes managerial and operational responsibilities. In such circumstances, the method of depreciation applied shall be either straight line depreciation or depreciation as shown on the concessionaire's Federal income tax return, whichever is less. To avoid interruption of services to the public upon termination of this concession contract for any reason or its expiration, the concessionaire shall, if requested by Reclamation, sell its existing inventory to another operator at the purchase price as shown on applicable invoices.

E. CONCESSION CONTRACT SUSPENSION

Reclamation may temporarily suspend operations under this concession contract in whole or in part, as deemed necessary to protect area visitors or to protect, conserve, and preserve area resources. This concession contract may be suspended in whole or in part for concession contract violations that include, but are not limited to, administrative

deficiency, operational deficiency, health and safety, employee problems or issues, and environmental regulation noncompliance as deemed necessary by Reclamation. No compensation of any nature shall be due the concessionaire by Reclamation in the event of a suspension of operations, including, but not limited to, compensation for losses based on lost income, profit, wages, or the necessity to make expenditures as a result of the suspension.

F. CONCESSION CONTRACT EXTENSION

The term of this concession contract may not be extended beyond that stated in Section A. If a subsequent contract is not in place at the time the existing concession contract expires or is terminated, an interim contract may be issued for a term not to exceed 2 years as specified in Reclamations Concession Directives and Standards.

G. NO RIGHT OF RENEWAL PREFERENCE

This concession contract does not include a preferential right of renewal.

H. CONTRACT SALE OR TRANSFER OF INTERESTS

The concessionaire shall not transfer, assign, sell, or otherwise convey or pledge interests, or part of its interests, under this concession contract, the concession operation, or the concessionaire's fixed assets within the (Name of Concession Area) Concession Area to another party without prior notification of intent and written approval of the sale or transfer by Reclamation. Concessionaires must complete and submit all sale and transfer information as required by Reclamation before any consideration will be given to the approval of a sale or transfer of all or any portion of a concession operation. **A proposed sale or transfer of interest is subject to the same evaluation process that is performed for a new concession contract.** Reclamation may choose not to approve a proposed sale or transfer or may place such conditions on any approval that Reclamation considers necessary to protect the public. Before the approval of a sale or transfer of interest, the terms and conditions of this concession contract are subject to reasonable changes that are consistent with the purpose and objectives of this concession contract and current Reclamation policy, at the discretion of Reclamation. In the event of a sale or transfer of interest, the length of this original concession contract term may be reduced but not extended, at the discretion of Reclamation.

I. ASSIGNMENT, SALE, OR ENCUMBRANCE OF INTERESTS

This concession contract is subject to the requirements of applicable laws with respect to proposed assignments and encumbrances, as those terms are defined by applicable laws. Failure by the concessionaire to comply with applicable laws is a material breach of this concession contract for which Reclamation may terminate this concession contract for default. Reclamation shall not be obliged to recognize any right of any person or entity

to an interest in this concession contract of any nature, including, but not limited to, CIR or operating rights under this concession contract, if obtained in violation of applicable laws.

The concessionaire shall advise any person(s) or entity proposing to enter into a transaction of the requirements of applicable law and the requirements of this concession contract.

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SECTION 2 – SERVICES AND OPERATIONS

A. REQUIRED SERVICES

During the term of this concession contract, Reclamation requires the concessionaire to provide the services, as listed below, to the public within the (Name of Concession Area) Concession Area:

[NOTE: This section can not be completed until a selection is made of a successful concessionaire(s).]

During the term of this concession contract, the concessionaire is not authorized to provide any service, facility, or activity not identified in this section of this concession contract, except as an amendment to this concession contract and signed by Reclamation. In providing these required services, the concessionaire must not permit any visitor, person, or organization to occupy or use the subject services for an extended period of time so as to preclude use by others **[wording here will be altered if the eventual contract permits Annual Occupancy as described in this prospectus]**. In providing these required services, only the concessionaire is authorized to commence construction as set forth in section 4H of this concession contract, and the concessionaire will not, under any circumstances, authorize any other person to commence construction of any kind. Reclamation shall prescribe the time-use limitations in the Operating Plan set forth in exhibit G of this concession contract, which may be changed from time to time during the term of this concession contract at the discretion of Reclamation.

Allowing any long-term exclusive use or unauthorized extended period use shall be considered a material breach of this concession contract for which Reclamation may seek monetary damages and other legal relief, including, without limitation, termination of this concession contract. Exclusive use is any use which excludes other appropriate public recreational use or users for extended periods of time.

Concessionaires are also prohibited from permitting the conduct of any commercial activities that utilize any concession facilities or land assignment by an outside party that is not an employee of the concessionaire in the conduct of Required Services. An example of this would be a person that rents a boat slip from the concessionaire and uses that boat in the conduct of a business as a paid fishing guide. If an external business has a written authorization from Reclamation to conduct activities, such as a fishing guide, it is permissible for the concessionaire to allow such authorized person(s) to launch at the concession launch ramp. Furthermore concessionaires may not allow advertising through signs or marketing handouts for any business intending to provide services to Lake Berryessa Visitors or planning to use Reclamation land at Lake Berryessa unless they receive written authorization from Reclamation to permit such advertising and business activities.

B. SCOPE OF SERVICES AND OPERATING PLAN

Reclamation reserves the right to determine and control the nature, type, and quality of the services provided and merchandise sold within the (Name of Concession Area) Concession Area as described in this concession contract. All such services and merchandise will be compatible with the intent of the concession contract, and questions of applicability or requests for variance shall be forwarded to the area manager for consideration. Approvals must be in writing.

The concessionaire shall provide, operate, and maintain the required visitor services and any support facilities and services in accordance with this concession contract to such an extent and in a manner considered satisfactory by Reclamation. The concessionaire is authorized to provide visitor services under the terms of this concession contract within the (Name of Concession Area) Concession Area on a nonexclusive use basis.

The concessionaire shall comply with all conditions set forth in the Operating Plan. The initial Operating Plan is attached to this concession contract as exhibit G. Reclamation, acting through the area manager in his discretion, after consultation with the concessionaire, may make reasonable modifications to the initial Operating Plan from time to time that are in furtherance of the purposes of this concession contract and are not inconsistent with the terms and conditions of the main body of this concession contract.

C. LEGAL, REGULATORY, AND POLICY COMPLIANCE

This concession contract, the operations thereunder by the concessionaire, and its administration by Reclamation shall be in accordance with the laws of the Congress and other State and local laws governing Lake Berryessa and relevant rules, regulations, and policies promulgated (See Exhibit L). The concessionaire shall operate and maintain its facilities and appurtenances in safe working order and shall ensure compliance with the laws of the State of California and all laws, regulations, and orders of the United States of America and any other public authority affecting such works. Certain applicable laws relating to nondiscrimination in employment and providing accessible facilities and services to the public are further described in exhibit A of this concession contract.

The concessionaire shall give Reclamation immediate written notice of any violation of applicable laws by the concessionaire, including its employees, agents, or contractors, and, at its sole cost and expense, must promptly rectify any such violation. Failure to notify Reclamation will be a material breach of the contract and can be reason for Reclamation to terminate the contract.

All correspondence and notices required by this concession contract shall be in writing and shall be served on the parties at the following addresses. The mailing of a notice by registered or certified mail, return receipt requested, shall be sufficient service. Notices sent to Reclamation shall be sent to the following address: **[NOTE: Complete the blanks below.]**

Reclamation: _____

Site name: _____

Address: _____

Attention: _____

Notices sent to the concessionaire shall be sent to the following address:

Concessionaire: _____

Address: _____

Attention: _____

D. RATES FOR GOODS AND SERVICES

Rates for all required goods and services shall be reasonable and appropriate for the type and quality of merchandise, facilities, and services required under this concession contract. All rates must be approved by Reclamation. Rate requests should reflect comparable goods and services provided by the private sector operating in a competitive environment under similar operating conditions. Should Reclamation not approve a rate request for any of the concessionaire's goods or services, based upon this comparability approach, the concessionaire is required to continue using the currently approved rates. If the concessionaire wishes to appeal Reclamation's determination it will need to resubmit a modified proposal with additional support information.

Reclamation may choose to accept the concessionaire's proposed rates; however, if Reclamation does not accept the concessionaire's proposed rates, Reclamation rate appeal reviews for goods and services are final and non-challengeable.

The concessionaire shall require its employees to observe strict impartiality as to rates and services in all circumstances. The concessionaire may, subject to the prior approval of Reclamation, grant complimentary or reduced rates under such circumstances as are customary in businesses similar to that which will be conducted under this concession contract. However, Reclamation reserves the right to review and modify the concessionaire's complimentary or reduced rate policies.

The concessionaire will provide Federal employees conducting official business with reduced rates for lodging, essential transportation, and other specified services necessary for conducting official business in accordance with Reclamation guidelines and policy. Complimentary or reduced rates and charges shall otherwise not be provided to Federal employees by the concessionaire, except to the extent that they are equally available to the general public. The concessionaire shall prominently post all rates and charges for goods and services provided to the visiting public.

E. NONDISCRIMINATION OF SERVICE TO VISITORS

Concessionaire employees shall not discriminate when setting rates or providing services to visitors. The concessionaire shall comply with all applicable laws and regulations, whether now in force or made effective after the execution of this concession contract,

relating to nondiscrimination in providing services to the public and accessible facilities and services, including, but not limited to, those set forth in exhibit A.

F. CONCESSIONAIRE EMPLOYEES

The concessionaire shall provide all personnel necessary to provide the visitor services required by this concession contract.

The concessionaire shall comply with all applicable laws relating to employment and employment conditions, including, but not limited to, those set forth in exhibit A.

The concessionaire shall require and ensure that its employees are hospitable and exercise courtesy and consideration in their relations with the public. The concessionaire will require its employees who come in direct contact with the public to wear a uniform by which they can be identified as employees of the concessionaire. Concessionaire uniforms must be consistent in style and color and have the name of the concession on all external wear shirts, blouses, jackets, or upper body apparel.

The concessionaire shall review the conduct of any of its employees whose action or activities are considered by the concessionaire or Reclamation to be contrary to the proper administration of the area and protection of visitor safety and enjoyment and shall immediately take such actions as are necessary to correct the problem.

In the initial hiring efforts of employees for this contract the Concessionaire will give priority consideration to employees of the outgoing concessionaire that have properly applied for positions in this new contract. This effort does not require that these employees are to be considered for the same position or even the same type of position.

G. CONCESSIONAIRE EMPLOYMENT CONDITIONS

The concessionaire shall comply with applicable laws relating to employment of workers, nondiscrimination in employment, and providing accessible facilities and services including, but not limited to, those set forth in attached exhibit A.

The concessionaire shall establish pre-employment screening, hiring, training, employment, termination, and other policies and procedures for the purpose of providing visitor services through its employees in an efficient and effective manner and for the purpose of maintaining a healthful, law abiding, and safe working environment for its employees. The concessionaire shall conduct appropriate background reviews of applicants to whom an offer of employment may be extended to ensure that they conform to the hiring policies established by the concessionaire.

The concessionaire shall maintain, to the greatest extent possible, a drug-free environment, both in the workplace and in any concessionaire employee housing, within the (Name of Concession Area) Concession Area. The concessionaire shall publish a statement notifying employees that the unlawful manufacture, distribution, dispensing,

possession, or use of a controlled substance is prohibited in the workplace and in the (Name of Concession Area) Concession Areas and specifying the actions that will be taken against employees for violating this prohibition. In addition, the concessionaire shall establish a drug-free awareness program to inform employees about the danger of drug abuse in the workplace, the availability of drug counseling, rehabilitation and employee assistance programs, and the concessionaire's policy of maintaining a drug-free environment both in the workplace and in the (Name of Concession Area) Concession Area.

The concessionaire shall conduct educational programs for its employees to deter substance abuse and alcohol abuse. Those employees who are in safety sensitive positions as determined by or consistent with Federal, State, or local health, law enforcement, or other appropriate agency, will be required to participate in periodic drug testing. The concessionaire will promptly report illegal drug use to Reclamation, should it occur. It is the responsibility of the concessionaire to structure a drug testing program that ensures, to the greatest extent possible, a drug-free workplace. The concessionaire shall provide Reclamation with a written summary of drug testing activity, if any, on an annual basis.

The drug awareness and management responsibility of the concessionaire may be exercised through an external agreement with individuals, companies, or agencies qualified to provide such assistance.

If the concessionaire provides employee housing under this concession contract, the concessionaire's charges to its employees for this housing must be reasonable.

H. CONCESSIONS REVIEW PROGRAM

The concessionaire shall be evaluated by Reclamation under the Concessions Review Program. The Concessions Review Program will consist of four separate evaluations: (1) Operations and Facilities Evaluation, (2) Public Health Service Inspection, (3) Safety and Environmental Evaluation, and (4) Contract Compliance Evaluation. The Operation and Facilities Evaluation shall be conducted semiannually. All other evaluations shall be conducted as Reclamation may desire and as identified in the Operation Plan. Reclamation may, at its discretion, terminate this concession contract in the case of an unsatisfactory rating on any of the evaluations. An external Reclamation review (evaluation) will be conducted every 5 years in accordance with LND 04-01 Section 4.D (27)(b).

A year end annual overall rating will be assigned as described in the Reclamation Concession Management Guidelines.

I. COUNTY SERVICES SURCHARGE

The Concessionaire shall pay Napa County a five percent (5%) County Services Surcharge (hereafter the CSS) on Gross Sales to cover Napa County expenses for law

enforcement, fire protection, public facilities (including but not limited to water and sewer services) and other appropriate services and infrastructure attributable in whole or in part to the commercial activities of the concessionaire at Lake Berryessa.

The Concessionaire will remit the CSS directly to the Napa County Treasurer in a timely manner quarterly. The CSS shall be in lieu of any Transient Occupancy Taxes that Napa County could legally require of concession operators. The concessionaire will identify the CSS within the body of their Annual Financial Report. Reclamation will only require that Franchise Fees be paid on a Gross Sales amount after the subtraction of the CSS. Reclamation will perform periodic audits of concessionaire's receipts and financial records to assure the appropriate payments are made to the County. This surcharge would be most effectively introduced at the time of sale instead of attempting to build it into the retail price of each sales item or service. This surcharge will be over and above the rates approved based upon comparability.

The CSS funds collected by Napa County will be placed in a Special Projects Fund, distinct from the County General Fund, and will only be used by the County for the purposes for which the CSS is collected.

Reclamation will review the CSS every three years to assure that the total amount that has been collected by the county is not in excess of or less than the total amount of expenses actually incurred by the County. To the extent that the CSS generates revenue that is in excess of or less than the actual expenditures of the County, Reclamation will adjust the CSS percentage accordingly for the next three year period. Such adjustment shall not exceed 2 percent either in an increase or decrease during each review period.

SECTION 3 – PROTECTION AND INTERPRETATION OF AREA RESOURCES

A. ENVIRONMENTAL MANAGEMENT OBJECTIVES

The concessionaire shall meet the following environmental management objectives in the conduct of its operations under this concession contract:

1. The concessionaire, including its employees, agents, and contractors, shall comply with all applicable laws pertaining to the protection of the public, employees, and natural and cultural resources within the (Name of Concession Area) Concession Area.
2. The concessionaire shall incorporate Best Management Practices in its operation, construction, maintenance, acquisition, provision of visitor services, and other activities under this concession contract.
3. The design, construction, and operation of the facilities and the provision of services under this concession contract shall be performed in a manner that prevents, identifies, and reduces pollution at the source. The concessionaire shall comply with all applicable laws and Reclamation policies and instructions promulgated and enacted during the term of this concession contract concerning any hazardous materials that will be used, produced, transported, stored, or disposed of on or in lands, water, or facilities owned by the United States of America or administered by Reclamation.
4. A concessionaire may not knowingly allow contamination of lands, water, or facilities within the (Name of Concession Area) Concession Area by hazardous materials, thermal pollution, refuse, garbage, sewage effluent, industrial or commercial waste, petroleum products, mine tailings, mineral salts, pesticides, pesticide containers, or any other pollutants, including, but not limited to, misuse of pesticides.
5. The concessionaire's operation, maintenance, acquisition, and purchasing activities will, to the extent practical, promote the use of environmentally preferable products, including materials and supplies with recycled content, and will avoid or minimize the quantity of toxic and hazardous materials entering the waste stream.
6. The concessionaire shall immediately report to the area manager any event that may or does result in pollution or contamination adversely affecting lands, water, or facilities within the (Name of Concession Area) Concession Area.
7. The concessionaire will become ISO 14000 certified no later than (enter date here identified in the proposal to the contract by successful offeror). The ISO 14000 certification represents a level of commitment to the environment regarding

efforts to; 1) minimize harmful effects on the environment caused by its business activities; and 2) achieve continual improvement of its environmental performance. Additional information regarding this certification and program description can be seen at; <http://www.iso.org/iso/en/prods-services/otherpubs/iso14000/index.html>.

B. ENVIRONMENTAL MANAGEMENT PROGRAM

1. The concessionaire shall implement and comply fully with, to the satisfaction of the area manager, the EMP attached as exhibit O of this concession contract.
[Note to offerors: Exhibit O at this time is not a complete EMP. Your proposal should include a proposed EMP and that will become the eventual exhibit if you are selected as a winning offeror.]
2. The EMP shall be submitted to Reclamation annually for revision and approval.

C. ENVIRONMENTAL EVALUATION

The concessionaire shall be evaluated by Reclamation on its environmental performance under this concession contract including, without limitation, compliance with the approved EMP and on the following criteria, as a part of the Safety and Environmental Evaluation:

1. Hazardous wastes are properly identified and managed.
2. An Oil and Hazardous Substance Spill Contingency Plan is in place; all employees are trained in first response procedures; Reclamation and appropriate regulatory authorities are notified of any spill or release of a hazardous substance.
3. A hazardous waste minimization strategy is in place, reporting requirements are met, and progress is being made toward reduction goals.
4. Areas of contamination caused by or attributable to the concessionaire are cleaned up to the satisfaction of Reclamation and regulatory authorities.
5. Hazardous material inventories and use records are maintained and provided to Reclamation. Hazardous materials are stored and handled in a manner that minimizes the potential for spill or release.
6. A solid waste minimization strategy is in place, waste generation information is provided to Reclamation, and progress is being made toward waste reduction goals.
7. An affirmative procurement program is in place to ensure that, where available, products containing recycled material or materials that are environmentally preferable are preferentially acquired (Green Procurement).

8. The concessionaire will conserve energy and improve energy efficiency of operations being implemented. Every effort will be made to ensure that environmentally safe and sustainable energy sources are used. A program to reduce overall energy consumption is documented and actively pursued.
9. The goals and objectives of the area's water conservation program are being met.
10. Prior written approval has been obtained from Reclamation for implementation of any pesticide, herbicide, or vector control action.
11. Sight, sound, and odor impacts to the environment and visitor experience are avoided when possible.
12. Care is exercised to avoid introduction of nonnative biota except as approved by the area manager.
13. The concessionaire conducts recurring training for staff concerning the critical importance of pollution prevention and spill report procedures, emergency incident and spill response, water and energy conservation, and the concessionaire's role in stewardship of (Name of Concession Area) Concession Area lands and waters. Training of employees in emergency and spill response includes field exercises done in coordination with Reclamation.
14. Employee incentive system is in place to reward employees for innovative or exemplary contributions toward prevention of pollution and to allocate some of the savings gained in energy and water conservation programs back to staff members who produce those gains.
15. Planning and design for facilities are coordinated with the area manager, including application of sustainable design principles and Reclamation reviews and approvals including, but not limited to, procedures imposed by Federal, State, county, or municipal regulations (e.g., National Environmental Policy Act, Historic Preservation Act (Section 106) and fire and safety and building codes).
16. Required environmental protection and pollution prevention facilities are in place or are in the process of being acquired, designed, or constructed with due diligence. Construction is conducted in a manner that prevents or minimizes pollutant emissions or discharges and protects public health and the environment.

D. ENVIRONMENTAL DATA, REPORTS, NOTIFICATIONS, AND APPROVALS

1. **Inventory of Hazardous Substances and Inventory of Waste Streams** – The concessionaire shall submit to the area manager, at least annually, an inventory of Federal Occupational Safety and Health Administration (OSHA) designated hazardous chemicals used and stored in the (Name of Concession Area) Concession Area by the concessionaire. The area manager may prohibit the use

of any OSHA hazardous chemical by the concessionaire in operations under this concession contract. The concessionaire shall obtain the area manager's approval before using any extremely hazardous substance, as defined in the Emergency Planning and Community Right to Know Act of 1986, in operations under this concession contract. The concessionaire shall also submit to the area manager, at least annually, an inventory of all waste streams generated by the concessionaire under this concession contract. Such inventory shall include any documents, reports, monitoring data, manifests, or other documentation required by applicable laws regarding waste streams.

2. **Reports** – The concessionaire shall submit to the area manager copies of all documents, reports, monitoring data, manifests, and other documentation required under applicable laws to be submitted to regulatory agencies. The concessionaire shall also submit to the area manager any environmental plans for which coordination with area operations are necessary and appropriate, as determined by the area manager in accordance with applicable laws. The concessionaire shall submit a quarterly report on the amount of toxic chemicals entering the waste stream from concession facilities.
3. **Notification of Releases** – The concessionaire shall give the area manager immediate written notice of any discharge, release, or threatened release (as these terms are defined by applicable laws) within or in the vicinity of the (Name of Concession Area) Concession Area, (whether solid, semisolid, liquid, or gaseous in nature) of any hazardous or toxic substance, material, or waste of any kind, including, without limitation, building materials such as asbestos, or any contaminant, pollutant, petroleum, petroleum product, or petroleum byproduct.
4. **Notice of Violation** – The concessionaire shall give the area manager, in writing, immediate notice of any written, threatened, or actual notice of violation from other regulatory agencies of any applicable law arising out of the activities of the concessionaire, its agents, or employees.
5. **Communication with Regulatory Agencies** – The concessionaire shall provide to the area manager timely written advance notice of communications, meetings, audits, inspections, hearings, and other proceedings, between regulatory agencies and the concessionaire related to compliance with applicable laws concerning operations under this concession contract. The concessionaire shall also provide to the area manager any written materials prepared or received by the concessionaire in advance of or subsequent to any such communications. The concessionaire shall allow the area manager to participate in any such communications. The concessionaire shall notify the area manager immediately following any unplanned communications between regulatory agencies and the concessionaire.

E. CORRECTIVE ACTION

1. The concessionaire, at its sole cost and expense, shall promptly control and contain any discharge, release, or threatened release, as set forth in this section, or any threatened or actual violation, as set forth in this section, arising in connection with the concessionaire's operations under this concession contract, including, but not limited to, payment of any fines or penalties imposed by appropriate agencies. Following the prompt control or containment of any release, discharge, or violation, the concessionaire shall take all response actions necessary to remediate the release, discharge, or violation and to protect human health and the environment.
2. Even if not specifically required by applicable laws, the concessionaire shall comply with directives of the area manager to clean up or remove any materials, products, or byproducts used, handled, stored, disposed of, or transported onto or into the (Name of Concession Area) Concession Area by the concessionaire to ensure that the (Name of Concession Area) Concession Area remains in good condition.

F. INDEMNIFICATION AND COST RECOVERY FOR ENVIRONMENTAL ACTIVITIES

1. In accordance with section 7 of this concession contract, the concessionaire shall indemnify the United States from all losses, claims, damages, environmental injuries, expenses, response costs, allegations or judgments (including, without limitation, fines, and penalties), and expenses (including, without limitation, attorneys' fees and experts' fees) arising out of the activities of the concessionaire, its employees, agents, and contractors pursuant to this section. Such indemnification shall survive termination or expiration of this concession contract.
2. If the concessionaire does not promptly contain and remediate an unauthorized discharge or release arising out of the activities of the concessionaire, its employees, agents, and contractors, as set forth in this section, or correct any environmental self-assessment finding of noncompliance, in full compliance with applicable laws, the area manager may, in its sole discretion and after notice to the concessionaire, take any such action consistent with applicable laws as the area manager deems necessary to abate, mitigate, remediate, or otherwise respond to such release or discharge or take corrective action on the environmental self-assessment finding. The concessionaire shall be liable for and shall pay to Reclamation any costs incurred by Reclamation associated with such action, upon demand. Nothing in this section shall preclude the concessionaire from seeking to recover costs from a responsible third party.
3. Any intentional violation of any of the provisions of this section shall constitute grounds for initiation of the procedure for immediate termination of the concession contract and shall make the concessionaire liable for the cost of full and complete remediation or restoration of any Federal resources or facilities that are adversely affected as a result of the violation.

G. WEED AND PEST MANAGEMENT

1. The concessionaire shall be responsible for managing weeds, vermin, and other pests on all authorized land and in all facilities assigned for use in conducting operations under the concession contract. Plants and animals that are native to Lake Berryessa may not be removed or harmed except with the prior written approval of Reclamation.
2. The concessionaire shall submit to Reclamation, at least 30 days in advance of any planned pesticide application, a Pesticide Use Permit. The concessionaire must request a pesticide application authorization even for emergency applications from Reclamation. Every effort will be made by Reclamation to streamline 'immediate need' applications in recognition of the impact to the business and the public. The concessionaire is responsible for complying with all training requirements (Federal, State, and local), operational requirements, and licensing requirements as may be pertinent to and required for the application of pesticides within the State of operation.

H. HAZARDOUS MATERIALS

1. The concessionaire shall maintain health and safety standards and take necessary mitigative and corrective measures to ensure healthy working and living environments in all assigned buildings and improvements. The concessionaire shall store, handle, and use hazardous materials in a manner that protects workers from harmful exposure, minimizes the potential for spills and releases, and reduces the use of these materials to diminish the subsequent generation of hazardous waste.

Hazardous materials shall be handled in accordance with OSHA 29 CFR 1910 and 1926. Examples of hazardous materials requiring special management controls include asbestos, radon, and lead-based paint. The concessionaire shall obtain Reclamation approval before using chemicals, pesticides, and toxic materials. Applications and methods of use shall conform to Federal, State, and local laws and applicable codes, policies, and guidelines.

2. **Hazardous Materials-Related Training** – The concessionaire shall provide training to all employees in accordance with 29 CFR 1910.120 (First Responder for Hazardous Materials Incidents) and 29 CFR 1910.1200 (Hazard Communication). The concessionaire shall comply with all Federal, State, and local laws and regulations pertaining to hazardous materials.
3. **Hazardous Waste Minimization and the Use of Environmentally Preferable Products** – The concessionaire shall attempt to minimize the use of hazardous materials in its operations, thus diminishing the amount of hazardous waste generated over time. The concessionaire shall seek to use fewer toxic materials and, instead, will use products that are environmentally preferable as a general

ire must provide information on all hazardous waste management (recycling and disposal) to Reclamation quarterly.

I. SOLID WASTE MINIMIZATION

The concessionaire shall implement policies and practices consistent with the area's solid waste minimization program. The concessionaire shall provide Reclamation with a written solid waste minimization plan. Special consideration should be given to the type of packaging and containers that are used in products offered for sale to visitors. If the concessionaire collects and hauls its solid waste, the concessionaire shall provide Reclamation information quarterly regarding the amount of solid waste generated and the amount of material recycled.

J. DRAINAGE AND STORMWATER POLLUTION PREVENTION

1. The concessionaire shall implement Best Management Practices to prevent the degradation of water quality in stormwater and other runoff from facilities assigned to the concessionaire. Erosion controls must be implemented at construction sites with disturbed soils exposed. Untreated water from vehicle and equipment washing must not be allowed to run off; oil/water separation must occur before discharge. Any improvements to drainage systems must be made in accordance with Federal, State, and local regulations.
2. The concessionaire shall ensure proper drainage control to protect landscapes, native vegetation, structures, facilities, improvements, and equipment while maintaining natural drainage patterns to the greatest extent possible.

K. RECYCLING AND CONSERVATION

1. The concessionaire shall implement a source reduction program designed to minimize concession use of disposable products in its operations. Polystyrene and plastics shall be used as little as possible (and then only polystyrene not containing chlorofluorocarbon). Where disposable products are needed, products that have the least impact on the environment shall be used.
2. The concessionaire shall implement a recycling program that fully supports the efforts of Reclamation. Products to be recycled include, but are not limited to, paper, newsprint, cardboard, bimetals, plastics, aluminum, glass, waste oil, antifreeze, and batteries.

The concessionaire shall provide recycling bins in all public areas. The concessionaire is responsible for emptying these bins as needed and for ensuring that these recovered materials are delivered for recycling.

Any beverage container deposits collected in excess of related operating expenses shall be used for environmental projects as approved in writing by the area manager. An accounting of the beverage container deposits collected and distributed will be provided to Reclamation on an annual basis.

3. The concessionaire will implement water and energy conservation measures for each of its operations. As new technologies are developed, the concessionaire will explore the possibility of integrating them into existing operations where there is potential for increased efficiency, reduced water or energy consumption, or reduced impacts on the environment.

L. WASTEWATER TREATMENT

1. The concessionaire shall ensure that all wastewater systems are operated in accordance with all applicable laws and environmental requirements, including Federal, State, and local laws and applicable codes, policies, and guidelines.

For Wastewater that will be discharged into surface water, the wastewater treatment facility must comply with the effluent limitation requirements established in Public Law 92-500 (Clean Water Act) and be permitted in accordance with the National Pollutant Discharge Elimination System, as administered by the Environmental Protection Agency.

All new wastewater treatment facilities must be designed in accordance with the best practicable wastewater treatment technology and be based on sound engineering standards such as those established by the American Society of Civil Engineers or the Recommended Standards for Wastewater Facilities (10 States Standards) prepared by the Great Lakes-Upper Mississippi River Board of State and Provincial Public Health and Environmental Managers.

When wastewater system modifications or new construction are proposed, the concessionaire will submit plans and specifications to Reclamation for approval.

2. All new vault toilets will incorporate the U.S. Forest Service Sweet Smelling Toilet design features or similar features from other sources. Vault toilets shall be pumped as necessary. All toilets will be cleaned and re-supplied as often as necessary to maintain a high degree of sanitation. Adequate sanitation facilities will be required for remote area activities such as river rafting, horseback riding, backpacking, and similar activities.
3. Septic tanks will be inspected annually by the concessionaire to determine the amount of accumulated scum and sludge. Records of septic tank measurements, inspections, and pumping will be available for review by Reclamation. Septic

tank risers will be provided for inspection holes to facilitate inspection and pumping. Septic tanks will be pumped when the scum or sludge levels in the tank dictate (generally every 3–5 years). The bottom of the scum should never be closer than 3 inches to the bottom of the outlet device, and the top of the sludge layer should never be less than 8 inches from the bottom of the outlet device. Records of septic tank measurements, inspections, and pumping should be maintained and be available for review by Reclamation.

Septic tank drain fields will be surveyed annually during a high-use period to identify system failures such as odors and surfacing wastewater. The drain field should be kept clear of trees and bushes, which may send roots into the drain field piping system causing clogging and premature failure. Additives to enhance bacterial growth in septic tank systems are generally not recommended.

4. Personnel who routinely come into contact with sewage or who work in or inspect wastewater treatment facilities, lagoons, etc., must have a current immunization for tetanus. Wastewater treatment plant personnel shall not eat, drink, or smoke when performing maintenance or inspecting equipment that may be contaminated with sewage. Workers cleaning up wastewater spills will wear coveralls, rubber boots, and rubber gloves. On completion of cleanup, workers shall remove clothing and place in plastic bag for laundering, take a hot shower using sufficient soap and water, and rinse rubber boots, gloves, and other protective equipment with 100 parts per million disinfectant solution of hypochlorite.
5. In the event of a major wastewater leak or spill, Reclamation will be notified within one (1) business day. Facilities and equipment contaminated with sewage as a result of leaks, spills, and sewage system backflow will be thoroughly washed down with water and detergent.
6. Lagoons should be monitored at least every 2 weeks for liquid coloration, presence of septic odors, properly operating aerators, material floating on the surface, insect breeding, and vegetation growth. The dikes should be free of rodent burrows. Vegetation on the dikes and at the waterline should be controlled. All lagoons should be signed and fenced in such a manner as to exclude unauthorized entry. An all-weather road should be constructed for each lagoon.

M. PROTECTION OF HISTORIC, CULTURAL, AND ARCHEOLOGICAL RESOURCES

[NOTE: The following requirement should be omitted if it is not appropriate for the concession operation. If included, it needs to be tailored to reflect the specific circumstances of the general area and the concession operations at Lake Berryessa.]

The concessionaire shall ensure that any protected sites and archeological resources within the (Name of Concession Area) Concession Area are not disturbed or damaged by the concessionaire's operations, including the concessionaire's employees, agents, and contractors, except in accordance with applicable laws and only with the prior approval

of Reclamation. Discoveries of any archeological resources by the concessionaire shall be promptly reported to the area manager. The concessionaire shall cease work or other disturbance that may impact any protected site or archeological resource until the area manager grants approval, upon such terms and conditions as the area manager deems necessary, to continue such work or other disturbance.

N. INTERPRETATION OF AREA RESOURCES

The concessionaire shall provide all required services in a manner that is consistent with and supportive of the interpretive themes, goals, and objectives of Reclamation at Lake Berryessa. The concessionaire may assist in interpretation in the (Name of Concession Area) Concession Area at the request of Reclamation to enhance visitor enjoyment of the area.

Reclamation reserves the right to enter into agreements with cooperating associations for supplemental services that are deemed by Reclamation to be part of and appropriate to the (Name of Concession Area) Concession Area's interpretive program. The proposed content of any interpretive programs, exhibits, or displays shall be submitted to Reclamation for review and written approval before being offered to the (Name of Concession Area) Concession Area visitors.

The concessionaire is required to develop interpretive materials and a means to educate visitors about environmental programs or initiatives implemented by the concessionaire and to support educational efforts through such actions as developing printed material (menus, marketing, correspondence, etc.), using outdoor signs, and, as appropriate, formal programs. Reclamation will provide assistance in regard to appropriate education and training for concession employees with this interpretive responsibility.

The proposed content in any interpretive programs, exhibits, displays, correspondence, marketing, or signs shall support the interpretive themes and objectives of the area as reflected in area planning documents, mission statements, or other interpretive documents and be submitted to Reclamation for review and written approval before being offered to (Name of Concession Area) Concession Area visitors (See Exhibit B Sec. E and Exhibit N for some theme details).

O. RISK MANAGEMENT PROGRAM

The concessionaire shall provide a safe and healthful environment for all employees and visitors. The concessionaire must develop an RMP, which must be approved by the area manager as specified in the concession contract and in exhibit M.

The concessionaire will adhere to the RMP in exhibit M of this concession contract.

The concessionaire shall comply with the following performance standards. The concessionaire will be evaluated, based on compliance with these standards, in the Concessions Review Program.

[NOTE: The following performance standards should be tailored to suit the size and complexity of the concession operation being proposed. These standards are presented in the prospectus to help the offeror understand the level of Safety Performance that will be expected of him or her. Changes and adaptations will be made in completing the standards for individual Programs once new concessionaires are selected and final contracts are completed based upon the proposal received.]

1. Policy written and available to staff - The policy states the concessionaire's commitment to provide a safe and healthy environment for employees and visitors. At a minimum, it will address procedures to identify and correct safety deficiencies and measures to ensure safety awareness and training in hazards recognition. The policy will outline accountability and responsibility for managers, supervisors, and employees. The policy will be distributed to employees or will be posted conspicuously. The scope and complexity of the program is commensurate with the size and type of operations and services being provided. Long-range goals and objectives to achieve a safe, healthful environment will be formulated.
2. Safety and health official is designated - The person with primary responsibility for managing the concessionaire's RMP will be clearly identified, and this person's responsibilities and authority will be clearly stated. Sufficient documentation will be provided to verify that the designated safety and health official has carried out his or her assigned responsibilities; such documentation may include inspection reports, records of training sessions conducted or attended, accident or incident reports and follow-ups, and analysis of accident trends.
3. Management and staff will be held accountable for compliance – Supervisors will be assigned the responsibility to conduct routine safety inspections of the assigned work areas, job sites, etc. Procedures to evaluate all employees on compliance with the concessionaire's RMP will be identified. Employees will be encouraged to report unsafe or unhealthy working conditions.
4. Sufficient funds and resources will be allocated to support the RMP – Adequate funds or other resources will be set aside to cover the needs for staff, training, personal protective equipment, safety literature, etc., commensurate with the size and complexity of the concession operation.
5. Annual goals and objectives will be established – Specific goals and objectives will be established annually for achieving a safer and more healthful work environment. These may be based on needs identified in prior reporting periods (e.g., specific goals for reducing back injuries; expanding safety segments of general orientation training for seasonal wait staff, housekeepers, and maintenance workers; and purchasing and using an expanded safety videotape library).
6. Program administration will be developed – Summary of accidents and injuries listing total number and total lost-days will be reported to Reclamation annually.

Employees (and employee unions) will be involved in the program through committees, suggestion programs, or other systems for reporting workplace hazards.

Safety and health information will be available to all permanent and seasonal employees. OSHA “right to know” posters (OSHA 2203) will be prominently displayed in areas frequented by staff.

7. An inspection schedule must be developed – A schedule for inspecting all facilities, equipment, and public use areas must be developed. The frequency and timing of inspections for all facilities and equipment will be identified and will be commensurate with the complexity or seasonality of the operation. Any facilities or equipment requiring specialized safety inspections (e.g., docks and marinas) will be identified, and a schedule will be established in accordance with the manufacturer’s recommendations, governing or professional organization recommendations, etc. Inspections will be conducted according to the established schedule.
8. Inspections must be conducted as scheduled or required – Procedures for documenting inspections, reporting hazards, etc., must be established. Inspections will be conducted as required.
9. Inspections will be conducted by people trained and capable of recognizing and evaluating hazards – Inspectors will be identified. Inspectors will have the knowledge, skills, and abilities to recognize, evaluate, and make recommendations for corrective actions. Inspectors will be familiar with the operation to be inspected and typical problems that might be associated with it. Inspectors will understand and follow the established procedures for documenting and reporting hazards. Inspectors will follow up to ensure that hazards will be abated within established time limits.
10. Inspection records must be kept for a minimum of 3 years – Inspection records must be kept for a minimum of 3 years and must be made available to the area manager upon request. Such records must include the following information: date of inspection, names of facility/building, identified deficiencies/hazards, classification of deficiencies, abatement date or action plan to correct deficiencies, and name of person conducting inspection.
11. “Imminent danger” deficiencies must be abated or action plans developed within time limits – Such deficiencies must be abated immediately. An example is a dangling power line. Abatement methods include correction of the deficiency or other action to reduce risk temporarily to staff and visitors. If abatement cannot be immediately achieved, the facility or service must be closed.
12. “Serious hazard” deficiencies must be abated or action plans developed within time limits – Such deficiencies should be abated within approximately 15 days or other reasonable timeframe as established by the concessionaire and approved by Reclamation. Abatement methods include correction of the deficiency or other

action to reduce risk temporarily to staff and visitors. If abatement cannot be immediately achieved, the facility or service must be closed.

13. “Non-serious hazard” deficiencies must be abated or action plans developed within time limits – Non-serious hazards should be abated within 45 days or a reasonable time frame as established by the concessionaire and approved by Reclamation. Abatement methods will include correction of the deficiency or other action to reduce risk temporarily to staff and visitors.
14. A documented plan must be in place for reporting and investigating employee and visitor accidents/incidents – Accident/incident reporting and investigating procedures must be documented. Such procedures must include, but are not limited to, the types of accidents to be reported, the forms to be used to properly document accidents/incidents, the person(s) responsible for reporting and/or investigating accidents/incidents and for completing the forms, and required timeframes for reporting and documenting accidents/incidents. Corrective action must be taken to reduce or eliminate recurrence of accidents. Records must be maintained verifying that accidents were reported and documented as required by Reclamation, OSHA, Office of Workers’ Compensation, etc.
15. All reportable accidents must be reported to Reclamation – A plan must be developed outlining procedures for accident reporting. Employees must be aware of these procedures. Reportable accidents/incidents include any fatalities, visitor incidents with likelihood of a tort claim against the United States, and fires. Employees must be aware of the type of accidents/ incidents that must be reported to Reclamation. Such records should include the date the accident/incident was reported, to whom, and by whom.
16. Activity-related hazards must be communicated – Activity related hazards (e.g., safety orientation for use of rental craft and horseback rides) must be effectively communicated to concession visitors.
17. Resource-related hazards must be communicated – Resource hazards that exist within the scope of the concession operation (e.g., falling rocks, wild animals, Lyme disease, rattlesnakes, trail conditions, and water hazards) must be effectively communicated to (Name of Concession Area) Concession Area visitors and staff.
18. Training plans for supervisors and employees must meet the requirements set forth in exhibit M
19. Training plans and accomplished training for supervisors must be established – A plan must be established identifying the training requirements for all supervisors. Required subject matter and required training courses must be identified and provided. All accomplished training must be documented.
20. Training plans and accomplished training for employees must be established – A plan must be established identifying the training requirements for all employees.

The plan will include safety training that is appropriate to the job being performed, as well as general safety information. Required subject matter and required training courses will be identified and provided. All accomplished training must be documented.

21. Procedures must be documented for all probable occurrences – An emergency action plan must be developed that identifies occurrences that will require specific procedures to be followed in the interest of life safety and property protection (e.g., earthquakes, floods, fires, bomb threats, and hazardous material spills or releases).
22. Plans must be coordinated with Reclamation – The concessionaire must coordinate all emergency action plans with Reclamation. The area manager will approve the plans. The plans will be reviewed annually and updated as necessary.
23. Plans will be distributed to employees or posted conspicuously – Employees must be familiar with emergency action plans and must be aware of their individual responsibilities in implementing such plans.

The concessionaire will be evaluated according to the schedule indicated in the Operating Plan, Exhibit G and the Standards and Requirements of Exhibit M (Risk Management Program), by Reclamation. This will constitute the safety portion of the Safety and Environmental Evaluation. The evaluation will be based on a review of the concessionaire's safety program and will evaluate concessionaire compliance with the performance standards. The concessionaire shall provide Reclamation access to its records, including any annual statistical information that may be required by the area manager. As part of the evaluation, Reclamation personnel may conduct random on-site reviews of facilities and equipment to evaluate the effectiveness of the concessionaire's own inspection program.

P. FUEL STORAGE

1. The concessionaire shall be responsible for compliance with all Federal, State, and local laws and regulations pertaining to fuel storage. The concessionaire must provide the area manager with copies of all reports and correspondence to, or required by, any regulatory agency pertaining to fuel storage. If any leak detection testing indicates a possible release or leak from a tank, Reclamation must be notified immediately; the concessionaire will be responsible for fulfilling all reporting, monitoring, and remediation requirements associated with a leak or release.
2. Reclamation must approve all plans for any work involving fuel storage tanks, tracer probes, monitoring wells, removal of contaminated soil, and groundwater remediation work.

SECTION 4 – LAND AND FACILITIES USED IN THE OPERATION

A. ASSIGNMENT OF LAND AND FACILITIES

Reclamation hereby authorizes the use of the following land and concession facilities to the concessionaire for the purposes of this concession contract:

1. Certain parcels of land for operation as described in exhibit B upon which the concessionaire shall conduct business.

[NOTE: Use 2. and 3. below, as appropriate.]

2. Certain Reclamation improvements described in exhibit D and in existence as of the effective date of this concession contract may be modified from time to time to include additional Reclamation improvements completed in accordance with the terms and conditions of this concession contract (*This sub-section 4.A.2 will probably only apply to Pleasure Cove*).
3. Certain concessionaire improvements described in exhibit D and in existence as of the effective date of this concession contract may be modified from time to time to include additional concessionaire improvements completed in accordance with the terms and conditions of this concession contract.

Reclamation shall have the right, at any time, to enter upon the lands used by the concessionaire for any purpose deemed reasonably necessary for the administration of Reclamation lands or the (Name of Concession Area) Concession Area.

Reclamation may, from time to time, amend exhibit B and exhibit D to reflect changes in concession land and facilities assigned to the concessionaire.

B. CONCESSION FACILITIES ASSIGNMENT WITHDRAWALS

Reclamation may withdraw all or portions of these concession facility assignments at any time during the term of this concession contract if:

- The withdrawal is necessary for the purpose of conserving, preserving, or protecting Lake Berryessa resources or visitor enjoyment or safety.
- The operations using the assigned concession facilities have been terminated or suspended by Reclamation.
- Reclamation and concessionaire improvements or land assigned to the concessionaire are no longer necessary for the concession operation.

Any permanent withdrawal of concession facilities assignments that Reclamation or the concessionaire considers to be essential for the concessionaire to provide the visitor services required by this concession contract will be treated as a termination of this concession contract pursuant to this section. The concessionaire will be compensated pursuant to this section of this concession contract and to exhibit C for the value of any CIR it may have, in permanently withdrawn concession facilities assignments. No other compensation is due the concessionaire in these circumstances.

C. RECLAMATION AND CONCESSIONAIRE IMPROVEMENTS

“Reclamation improvement(s),” as used herein, means Government owned real property improvements constructed upon or affixed to the lands assigned to the concessionaire, including buildings, structures, fixtures, equipment, and other improvements affixed to or resting upon the assigned lands in such a manner as to be a part of the realty. Exhibit E contains a list of assigned Government property (*This sub-section 4.C. will likely only be applicable to Pleasure Cove*).

The concessionaire may not remove, dismantle, or demolish any Reclamation improvements in the (Name of Concession Area) Concession Area without the prior approval of Reclamation.

Any salvage resulting from the authorized removal, severance, or demolition of Reclamation improvements within the (Name of Concession Area) Concession Area shall be the property of the United States.

In the event that an assigned Reclamation improvement is removed by the concessionaire, abandoned, demolished, or substantially destroyed and no other improvement is constructed on the site, the concessionaire, at its expense, shall promptly, upon the request of Reclamation, restore the site as nearly as practicable to its original condition.

“Concessionaire improvement(s),” as used herein, means real property improvements provided by the concessionaire with the written approval of Reclamation for the purposes of this concession contract (including any improvements made to Reclamation improvements and improvements made from funds in the RAFI), during the term of this concession contract, including buildings, structures, fixtures, equipment, and other improvements affixed to or resting upon the assigned lands in such a manner as to be a part of the realty. Concessionaire improvements constructed upon or affixed to the lands assigned to the concessionaire do not include any interest in the land upon which the improvements are located.

The concessionaire may construct or install upon lands assigned to the concessionaire under this concession contract only those concessionaire improvements that are determined by Reclamation to be necessary and appropriate for the conduct by the concessionaire of the services required under this concession contract. Construction or installation of concessionaire improvements and associated expenditures may occur only after the written approval by Reclamation of their location, plans, and specifications.

Reclamation may prescribe the form and content of the application and the procedures for such approvals. The desirability of any project, as well as the location, plans, and specifications thereof, will be reviewed in accordance with applicable laws and Reclamation Manual Policy and Directives and Standards in Exhibit L. The concessionaire may not remove, dismantle, or demolish concessionaire improvements in the (Name of Concession Area) Concession Area without the prior approval of Reclamation.

Any salvage resulting from the authorized removal, severance, or demolition of abandoned concessionaire improvements within the (Name of Concession Area) Concession Area shall be the property of the United States. Salvage resulting from concessionaire-owned property remains the property of the subject concessionaire.

In the event that an assigned concessionaire improvement is removed, abandoned, demolished, or substantially destroyed and no other improvement is constructed on the site, the concessionaire, at its expense, shall promptly, upon the request of Reclamation, restore the site as nearly as practicable to its original condition.

Any monetary interest of the concessionaire in improvements owned by or assigned to them shall not be construed to include or imply any authority, privilege, or right to operate or engage in any business or other activity. The use or enjoyment of any such structure, fixture, or improvement shall be wholly subject to the applicable provisions of this concession contract and to the laws and regulations relating to Lake Berryessa.

D. PERSONAL PROPERTY

The concessionaire shall provide all personal property, including but not limited to removable equipment, vehicles, vessels, furniture, inventory, and goods necessary for its operations under this concession contract. Such personal property shall not be considered concessionaire improvements, and the concessionaire shall not be entitled to any reimbursement or other means of compensation for such personal property.

Reclamation may provide certain items of Government personal property, including but not limited to, removable equipment, furniture, and goods for the concessionaire's use in the performance of this concession contract. Reclamation hereby assigns Government personal property listed in exhibit E to the concessionaire as of the effective date of this concession contract. Reclamation may modify exhibit E from time to time as items are withdrawn and items are added. The concessionaire shall be accountable to Reclamation for the Government's personal property assigned to it and shall be responsible for maintaining the property as is necessary to keep it in good and operable condition, reasonable wear and tear excepted. Any replacement of such personal property provided by the concessionaire shall become the property of Reclamation. If the property ceases to be serviceable, it shall be returned to Reclamation for disposition.

The concessionaire shall be permitted to sell its personal property that is used in the concession operation, on the Federal estate, to the subsequent concessionaire. However, the concessionaire may not sell any other personal property on the Federal estate or sell

on the Federal estate any of its personal property used in the concession operation to any party other than a subsequent concessionaire. The sale of personal property assets by any other party is prohibited on the Federal estate. "For Sale" signs are strictly prohibited on the Federal estate and specifically from within the (Name of Concession Area) Concession Area.

E. CONDITION OF CONCESSION FACILITIES

The concessionaire has inspected the concession facilities and any assigned Government personal property, is thoroughly acquainted with their condition, and accepts the concession facilities and any assigned Government personal property "as is."

F. UTILITIES

Reclamation may provide utilities to the concessionaire for use in connection with the operations required under this concession contract when available and at reasonable rates reflecting the cost to provide such services and to be determined by Reclamation's discretion and in accordance with applicable laws.

If Reclamation does not provide utilities to the concessionaire, the concessionaire shall, with the written approval of Reclamation and under any requirements that Reclamation shall prescribe, secure necessary utilities at its own expense from sources outside the Lake Berryessa area or shall install the utilities within the (Name of Concession Area) Concession Area with the written permission of Reclamation, subject to the following conditions:

Any water or water rights deemed necessary for the operation of the concession on Federal lands must be acquired in cooperation with Reclamation at the concessionaire's expense in accordance with applicable State procedures and law. Upon expiration, bankruptcy, or termination of this concession contract for any reason, the concessionaire must assign these water rights to the United States without compensation, and these water rights will become the property of the United States.

If requested by Reclamation, the concessionaire must provide to Reclamation any utility service provided by the concessionaire for its operations to such extent as will not unreasonably restrict anticipated use by the concessionaire. Unless otherwise agreed by the concessionaire and Reclamation in writing, the rate per unit charged Reclamation for such service shall be approximately the average cost per unit of the concessionaire providing such service for its own operations.

Reclamation shall first approve all appliances and machinery to be used in connection with the privileges granted in this subsection, as well as the plans for location and installation of such appliances and machinery.

G. CONCESSION FACILITIES IMPROVEMENT PROGRAM

The concessionaire shall undertake and complete an improvement program, hereinafter “Concession Facilities Improvement Program,” or “CFIP,” that indirectly benefits the public, costing not less than **[NOTE: Complete the following blank with the amount]** _____ dollars as adjusted for each project to reflect par value in the year of actual construction in accordance with the appropriate consumer price index.

The CFIP shall include:

[NOTE: Provide a detailed description of the CFIP. Use the same detailed description from or modified from the selected concessionaire(s) proposal. The wording should include the specifications of the required improvements, any descriptions of comparable facilities used (e.g., Denny’s Restaurant, Comfort Inn), and cost estimates. The CFIP should also specify the locations for the improvements, identify any facilities to be removed or demolished, and identify any sites to be restored to their native habitat and/or landscaped, and all related costs. If there will be multiple improvements, each with different dates for commencement and completion, include these dates in this section.] The concessionaire shall commence construction under the CFIP on or before **[NOTE: When multiple improvements with varying commencement dates are listed in the section above, complete the following blank with the earliest of those commencement dates]** _____, 20____, in a manner that demonstrates to the satisfaction of Reclamation that the concessionaire is in good faith reasonably carrying forward the CFIP. No construction may begin until the concessionaire receives written approval from Reclamation of plans and specifications in accordance with exhibit H. Only the concessionaire may commence construction of improvements and may not authorize anyone else, including visitors, to construct anything. During the period of construction, the concessionaire shall provide Reclamation with such evidence or documentation as may be satisfactory to Reclamation to demonstrate that the CFIP is being duly carried forward.

The concessionaire shall complete the real property improvements and make them available for public use on or before _____, 20____. **[NOTE: When various completion dates are listed above for multiple improvements, complete this blank with the last of those completion dates.]** Reclamation may extend this date in circumstances where Reclamation determines that the delay resulted from events beyond the control of the concessionaire.

At the discretion of Reclamation, the concessionaire may be relieved in whole or in part of any or all of the obligations of the CFIP for such stated periods when documented circumstances beyond either the concessionaire’s control or Reclamation’s control warrant such relief.

H. MAINTENANCE PLAN AND MAINTENANCE OBLIGATION

The concessionaire shall be solely responsible for the physical maintenance, repairs, housekeeping, grounds keeping, and landscaping of all concession facilities used in operations under this concession contract, to the satisfaction of Reclamation.

For these purposes, the concessionaire shall undertake appropriate inspections and shall establish and revise, as necessary, a Maintenance Plan consisting of specific maintenance requirements that shall be adhered to by the concessionaire. The initial Maintenance Plan is set forth in Exhibit F. The Maintenance Plan shall be submitted to Reclamation for annual approval. Reclamation may make reasonable modifications to the Maintenance Plan from time to time after consultation with the concessionaire. Such modifications shall be in furtherance of the purposes of this concession contract and shall not be inconsistent with the terms and conditions of the main body of this concession contract.

In regard to this Prospectus, offerors considering a proposal on Markley Cove should review the special wording in Exhibit F (Sec. B.1.i of PART 6 – Exh. F) that discusses the assignment of lakeshore litter pick-up on both shorelines of Markley Cove.

I. RESERVE ACCOUNT FOR FACILITIES IMPROVEMENT

The following Definition/Description of Capital Investment Recovery is provided in this Section 4I because it is integral to properly handling the funds dedicated to the Reserve Account for Facilities Improvement (RAFI).

***CAPITAL INVESTMENT RECOVERY (CIR) [Definition/Description]** - The concessionaire shall have a right to reimbursement of their approved investments in capital improvements. That reimbursement right shall be called CIR. The concessionaire will obtain CIR only in capital improvements constructed in accordance with the terms and conditions of this concession contract, including, without limitation, the terms and conditions of the following contract exhibits; Exhibit C: Capital Investment Recovery; Exhibit H: Improvement Project Procedures; and Exhibit K: Reserve Account for Facilities Improvements.*

The concessionaire shall establish and manage a “Reserve Account for Facilities Improvement” or “RAFI,” in which RAFI funds shall be used to carry out, on a project basis in accordance with Exhibits C, D, E, H, and K, improvements, construction, and repair and maintenance of concession facilities that are nonrecurring within a 7-year timeframe. Such projects may include repair or replacement of foundations, building frames, window frames, roof sheathing, sub-floors, and drainage and the rehabilitation of building systems such as electrical, plumbing, built-in heating, air conditioning, and similar projects. The concessionaire will carry out projects directed by Reclamation. No projects may commence and no associated expenditures may be made until the concessionaire receives written approval from Reclamation.

Projects paid for with RAFI funds will not include routine, operational maintenance of facilities or housekeeping, landscaping, and grounds-keeping activities. Nothing in this

section shall lessen the responsibility of the concessionaire to carry out the maintenance and repair of concession facilities or housekeeping and grounds-keeping activities as required by this concession contract from concessionaire funds exclusive of the funds contained in the RAFI. Each quarter, the concessionaire shall submit quarterly RAFI activity reports to Reclamation (See Exhibit K to this Contract). Each year, the concessionaire shall include in its annual financial report submitted to Reclamation a reserve account annual reconciliation as detailed in Exhibit J of this concession contract.

The concessionaire shall establish an interest bearing banking account to receive deposits for the RAFI. RAFI deposits shall be made quarterly by the concessionaire as a percentage of the concessionaire's gross receipts.

The concessionaire shall establish and deposit into a RAFI, within 15 days after signing the contract, a sum equal to \$10,000 (Ten Thousand Dollars). This amount will serve as an initial working balance and will offset amounts due in the initial quarterly payments until an amount equal to this initial amount has been covered.

The concessionaire shall deposit into this RAFI, within 15 days after the last day of each quarter of concessionaire operations, a sum equal to **X** percent (X %) of the concessionaire's gross receipts for the previous quarter.

Reclamation believes that a RAFI under this contract should be a minimum of 3%. However, because of the nature of this Prospectus opportunity an amount will not be stipulated but Reclamation reserves the right to adjust the proposed level if it is felt to be inadequate. An operation that is relying on all new construction vs. one that is utilizing most of the existing facilities can probably get by with a lower percentage because of the lower level of anticipated major maintenance.

If the concessionaire fails to make timely deposits to the RAFI or fails to deposit the initial required balance, Reclamation may terminate this concession contract for default.

The balance in the RAFI shall be available exclusively for funding projects in accordance with the RAFI's purpose. For all expenditures made for each project from the RAFI, the concessionaire shall maintain auditable records including invoices, billings, canceled checks, and other documentation satisfactory to Reclamation. Failure to expend RAFI funds when directed and as scheduled by Reclamation shall be considered as a material breach of this concession contract for which Reclamation may seek monetary damages and other legal relief including, without limitation, termination of this concession contract.

The concessionaire **shall obtain** a CIR for improvements made with RAFI funds.

RAFI funds are established as a hedge against future expenditures of the type described here and in Exhibit K. They are intended to provide a dependable source of funds for these projects and to help assure that the concessionaire and any applicable Reclamation improvements are maintained at a satisfactory level. Since the RAFI fund itself and improvements made with the fund are both applicable to the concessionaires CIR the concessionaire will, to the extent that RAFI funds are not adequate for all the necessary projects in this category, utilize their own funds for such necessary projects as determined

by Reclamation. It is not known if the X percent (X%) requirement (*See Exhibit K. Reclamation recommends a minimum of a 3% of gross RAFI*) will be an adequate amount as it represents what is felt to be an adequate level for this type of work. If projects over and above the available RAFI funds are identified they will be reviewed and approved the same as other projects and the concessionaire funds expended over and above the available RAFI funds will likewise become part of the CIR for the concessionaire just as if they had been expended from the RAFI account.

RAFI deposits shall be made monthly by the concessionaire as a percentage of the concessionaire's gross receipts.

[Note: An offeror may also suggest a fixed amount as an annual RAFI level for Reclamations consideration. However Reclamation prefers a percentage and may direct a change depending upon how it works into the overall financial proposal. Neither approach is a specific factor of the evaluation of proposals so there is no penalty or benefit to either a percentage or a fixed amount.]

In the event that the existing concession contract is extended through an amendment, the existing unexpended RAFI funds in the RAFI account at the end of this concession contract shall remain in the RAFI account as the RAFI fund balance for the extension to this concession contract.

The value of any RAFI funds not duly expended by the concessionaire by the end of this concession contract shall be the property of the concessionaire unless there are approved or otherwise Reclamation required RAFI projects previously identified for completion in advance of contract expiration that have not been accomplished. In this case the projects estimated costs plus an administrative fee of 10% of the project(s) estimated costs will be transferred to the next concessionaire for application to those projects. If the concessionaire is also the succeeding concessionaire then the unexpended portion will apply to the initial RAFI funding established in the next contract less the estimated costs of uncompleted but required projects.

In the event of termination for bankruptcy or for any other reason or for expiration of an alternate term as a result of failure to complete the CFIP, any unexpended RAFI funds shall become the property of the United States of America.

J. LIVESTOCK AND OTHER ANIMALS

Livestock or farm animal breeding or grazing is prohibited within the (Name of Concession Area) Concession Area.

The concessionaire must accommodate service dogs and is allowed to accommodate clients and visitors with animals, domestic pets or livestock provided that adequate, safe, and sanitary corrals and pens are provided. To protect the health and safety of the animals, employees, and visitors, animals, livestock, and domestic or feral waterfowl will not be allowed to freely roam the (Name of Concession Area) Concession Area or the Federal estates.

SECTION 5 – COMPENSATION

A. REIMBURSEMENT FOR INVESTMENTS IN FIXED ASSETS CONSTRUCTED BY CONCESSIONAIRE

Applicable Law - Section 5.b of Public Law 96-375 as follows applies to this contract in regard to the determination of concessionaire owned asset value during the term and at expiration of this and future concession contracts at Lake Berryessa at this location:

Sec. 5(b) of PL 96-375 - Notwithstanding any other laws to the contrary, all permanent facilities placed by the concessionaires in the seven resorts at Lake Berryessa shall be considered the property of the respective current concessionaires. Further, any permanent additions or modifications to these facilities shall remain the property of said concessionaires: Provided, That at the option of the Secretary of the Interior, the United States may require that the permanent facilities mentioned herein not be removed from the concession areas, and instead, pay fair value for the permanent facilities or, if a new concessionaire assumes operation of the concession, require that new concessionaire to pay fair value for the permanent facilities to the existing concessionaire.

The term ‘fair value’ as used in this law means the same as ‘fair market value’ as used in the appraisal industry. The application of this law also provides Reclamation the opportunity to identify which facilities will be retained into the next term (if any) of this concession contract. Concessionaires will have no right for compensation of any facilities identified by Reclamation not to remain into the next contract term. However, it is the intent of Reclamation to only permit the development of new facilities identified within the Capital Facility Investment Program portion of this contract and other facility development that may be properly permitted during the term of this contract that have an expected future beyond the term of this contract. However, if the concessionaire fails to properly maintain existing and new facilities throughout the term of this contract that may be substantial justification for Reclamation to determine not to retain any facility for the next contract term.

This concession contract hereby provides the concessionaire, subject to all applicable definitions, requirements, and limitations of this concession contract and exhibit C, the right to reimbursement for concessionaire improvements constructed by the concessionaire under the terms of this concession contract, including, but not limited to, those capital improvements that result from the construction, improvement, or repair of an existing Reclamation improvement or concessionaire improvement.

This concession contract specifies the concessionaire’s right to reimbursement in Real Property improvements. Exhibits C and D describe the Real Property improvements in which the concessionaire has such a right and states the value of this reimbursement as of the effective date of this concession contract. The concessionaire shall not receive reimbursement under this concession contract except as described in exhibits C, D, H, and K of this concession contract. Reimbursement shall be obtained as a result of expenditures by the concessionaire of concessionaire funds or from RAFI funds

described in this concession contract section 4 I and Exhibit K. The concessionaire shall obtain reimbursement only in improvements approved by Reclamation.

If the concessionaire named in this concession contract is awarded the subsequent concession contract, it will receive no CIR at the time of contract expiration. Instead, the concessionaire shall retain the CIR until the expiration of the next concession contract.

The value of reimbursement will, under no circumstances, exceed the fair market value of the fixed asset or capital improvement. The fair market value of concessionaire facilities is to be determined by the cost approach method of appraisal.

The compensation provided by this section shall constitute full and just compensation to the concessionaire from Reclamation for all losses and claims occasioned by the circumstances described below.

B. CONDITIONS OF REIMBURSEMENT

When this concession contract expires, the concessionaire shall be compensated according to section 5 A of the concession contract. When paid such value, the concessionaire shall relinquish any claim to reimbursement.

In the event this concession contract is terminated due to concessionaire default or expires on the alternate term date as a result of failure to complete the CFIP, the concessionaire shall forfeit and not receive any reimbursement for its investment in fixed assets or improvements.

If, for any reason, including concession contract expiration, termination for bankruptcy, or termination for any other reason, the concessionaire shall cease to be authorized by Reclamation to conduct operations under this concession contract. At the discretion of Reclamation, the concessionaire may be required to remove any or all improvements and personal property and to restore the (Name of Concession Area) Concession Area to a satisfactory condition as approved by Reclamation. Removal of the concessionaire's improvements or other property and cleanup of the (Name of Concession Area) Concession Area will be the responsibility of the concessionaire and is not compensable. Reclamation shall specify a time period within which the concessionaire shall remove such improvements or other property and clear or restore the (Name of Concession Area) Concession Area. All improvements or other property not removed within the time period specified will be considered abandoned and will automatically become property of the United States of America without compensation to the concessionaire and will be subject to disposal under Federal regulations. Any required removal of abandoned property, personal or otherwise, and cleanup work remaining after the period specified will be performed by Reclamation, and the concessionaire shall be liable and billed for all associated costs.

C. COMPENSATION FOR PERSONAL PROPERTY

No compensation is due the concessionaire from Reclamation or a successor concessionaire for the concessionaire's personal property used in operations under this concession contract. However, Reclamation or a successor concessionaire may wish to purchase such personal property from the concessionaire. If personal property is sold, the purchase price of the personal property shall be determined by mutual agreement between the concessionaire holding this concession contract and the successor concessionaire or Reclamation.

Personal property not removed from the area by the concessionaire in accordance with the terms of this concession contract shall be considered abandoned property subject to disposition by Reclamation, at full cost and expense of the concessionaire, in accordance with applicable laws. Any cost or expense incurred by Reclamation as a result of such disposition may be offset from any amounts owed to the concessionaire by Reclamation to the extent consistent with applicable laws.

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SECTION 6 – FEES

[NOTE: Franchise fees are considered direct returns to the Government and are paid directly to the U.S. Treasury, credited in accordance with the Directives and Standards in the Crediting of Incidental Revenues, PEC 03-01. Prepare and submit the Collection Information Form with monies collected after determining the Collection Information Code (CIC) from the CIC Tables in the Revenue Management Reference Manual.]

This section of the Draft Concession Contract is to be used as a template and offerors that are considering their franchise fee level should put it into a similar format even if some of components here are not applicable to the offeror's proposal.

A. FRANCHISE FEE

[NOTE: The franchise fee can be expressed as either a single fixed percentage of gross receipts over the entire term of the contract, or it may be expressed as an increasing percentage corresponding to ranges of increasing revenues (referred to as a staggered or tiered fee structure). Note, however, that the franchise fee should not be structured as a tiered fee unless a feasibility study is performed and annual revenues are projected for the entire duration of the contract term. Without estimates of expected future gross receipts, the evaluation team will be unable to compare competing franchise fee proposals. When entering the franchise fee and annual gross receipt numbers, write them both numerically and by spelling the words out in English to make sure there is no misunderstanding.]

[For the term of this concession contract, the concessionaire shall pay to Reclamation, for the use, rights, and privileges granted under this concession contract, a franchise fee equal to _____ percent (____ %) of the concessionaire's gross receipts for the preceding year or portion of a year.]

[OR]

[For the term of this concession contract, the concessionaire shall pay to Reclamation, for the use, rights, and privileges granted under this concession contract, a franchise fee. The franchise fee shall be equal to:

_____ percent (____ %) of the concessionaire's gross receipts less than \$ _____ (_____ dollars) for the year,

_____ percent (____ %) of the concessionaire's receipts between \$_____ (_____ dollars) and \$_____ (_____ dollars) for the year,

_____ percent (____ %) of the concessionaire's gross receipts between \$_____ (_____ dollars) and \$_____ (_____ dollars) for the year,

_____ percent (____ %) of the concessionaire's gross receipts more than \$_____ (_____ dollars) for the year.]

The franchise fee is a direct return to the Federal Government and is a fair and equitable charge levied by the Government for the use, rights, and privileges granted under this concession contract. The franchise fee shall be credited to the U.S. Treasury in accordance with Reclamation directives and standards in exhibit L.

Neither the concessionaire nor Reclamation shall have a right to adjust the fees in this concession contract. The concessionaire has no right to a waiver of the established franchise fee under any circumstances.

Please review Section 14 of PART 4 and Principal Factor 5 of PART 5 of this prospectus for further information on Franchise Fees as they apply to **this** concession opportunity as that information may impact your development of this section..

B. PAYMENTS DUE

The franchise fee shall be due on a monthly basis at the end of each month and shall be paid by the concessionaire in such a manner that Reclamation shall receive payment within 15 days after the last day of each month that the concessionaire operates the concession enterprise. The concessionaire shall pay any additional franchise fee amounts due at the end of the concessionaire's fiscal year as a result of adjustments to gross receipts determined at the time of submission of the concessionaire's annual financial report. Overpayments shall be offset against the following year's fees. In the event of termination, bankruptcy, or expiration of this concession contract, overpayments will first be credited against any money due and owing the Government, and the remainder, if any, will be returned to the concessionaire.

The concessionaire shall use the Treasury Financial Communications System and shall electronically deposit all franchise fee payments consisting of \$10,000 or more.

C. INTEREST

An interest charge will be assessed on overdue amounts for each 30 day period, or portion thereof, that payment is delayed beyond the 15 day period provided for above. The percent of interest charged will be equal to the current value of funds rate to the U.S. Treasury as published quarterly in the Treasury Financial Manual. Reclamation may also impose penalties for late payment to the extent authorized by applicable law.

SECTION 7 – INSURANCE AND INDEMNIFICATION

The insurance section of this Draft Contract and Exhibit I to this contract are presented in a manner that outlines types and levels of insurance that Reclamation will consider as acceptable coverage. Offeror's are not required to obtain insurance at these exact levels and may tailor their packages to meet the reasonable needs of their unique proposal but should be aware that Reclamation intends to review the proposed insurance package and retains the right to direct changes or upgrades if it is felt the planned coverage is inadequate based upon industry norms of satisfactory insurance levels. All direction in regard to indemnification for the US/Reclamation and the need to provide certificates of insurance and appropriate endorsements are not flexible and must be followed. Offerors need to outline their anticipated packages especially as it applies to Exhibit I.

A. INDEMNIFICATION

The concessionaire agrees to assume liability for and does hereby agree to save, hold harmless, protect, defend, and indemnify the United States of America, its agents, and its employees from and against any and all liabilities, obligations, losses, damages or judgments, including but not limited to, penalties and fines, claims, actions, suits, costs and expenses (including but not limited to attorneys' fees and experts' fees) of any kind and nature whatsoever on account of fire or other peril, bodily injury, death, or property damage, or claims for bodily injury, death, or property damage of any nature whatsoever and by whomsoever made, in any way connected with or arising out of the activities of the concessionaire, its employees, agents, subcontractors, or contractors under this concession contract. This indemnification shall survive the termination, bankruptcy, or expiration of this concession contract.

B. INSURANCE IN GENERAL

The concessionaire shall obtain and maintain during the entire term of this concession contract, at its sole cost and expense, the types and amounts of insurance coverage necessary to fulfill the obligations of this concession contract and exhibit I subject to the approval of Reclamation. The initial insurance requirements are set forth below and in exhibit I. Any changes or additional requirements that Reclamation determines necessary must be reasonable and consistent with the types and coverage amounts of insurance a prudent businessperson would purchase in similar circumstances. Before signing the concession contract, the concessionaire shall report to Reclamation, and Reclamation shall approve, the types and amounts of insurance coverage to be purchased by the concessionaire. The concessionaire shall purchase such insurance to be effective as of the date of signing the concession contract.

Reclamation will not be responsible for any omissions or inadequacies of insurance coverage and amounts in the event the insurance purchased by the concessionaire proves to be inadequate or otherwise insufficient for any reason whatsoever.

C. CERTIFICATE OF INSURANCE AND CERTIFICATE OF ENDORSEMENT

The concessionaire shall, at the time insurance is first purchased and annually thereafter, provide Reclamation with a Certificate of Insurance that accurately details the conditions of the policy as evidence of compliance with this section. The concessionaire shall provide Reclamation immediate written notice of any material change in the concessionaire's insurance program hereunder, including without limitation, cancellation of any required insurance coverage. Furthermore, the concessionaire will provide Reclamation with a Certificate of Insurance and Certificate of Endorsement (COE) through the insurance company. The insurance company's COE will provide Reclamation with notice of policy change or cancellation. Reclamation will be an "additional Named Insured" on all insurance policies.

D. COMMERCIAL PUBLIC LIABILITY

The concessionaire shall provide commercial general liability insurance against claims arising out of or resulting from the acts or omissions of the concessionaire or its employees, agents, or contractors in carrying out the activities and operations required or authorized under this concession contract. This insurance shall be in the amount commensurate with the degree of risk and the scope and size of the activities required under this concession contract, as more specifically set forth in exhibit I. Furthermore, the commercial general liability package shall provide no less than the coverage and limits described in exhibit I. All liability policies shall specify that the insurance company shall have no right of subrogation against the United States of America and shall provide that the United States of America is named an additional insured.

From time to time, as conditions in the insurance industry warrant, Reclamation may, at Reclamation's discretion, modify exhibit I to revise the minimum required limits or to require additional types of insurance, provided that any additional requirements must be reasonable and consistent with the types of insurance a prudent businessperson would purchase in similar circumstances.

E. PROPERTY INSURANCE

In the event of damage or destruction, the concessionaire will repair or replace those concession facilities and the personal property used by the concessionaire in the performance of the concessionaire's obligations under this concession contract.

For this purpose, the concessionaire shall provide fire and extended insurance coverage on concession facilities for all or part of their replacement cost, as specified in exhibit I, in amounts no less than Reclamation may require during the term of the concession contract. The minimum values currently in effect are set forth in exhibit I. This exhibit will be revised at least every 3 years or sooner if there is a substantial increase in value.

Commercial property insurance shall provide for the concessionaire and the United States of America to be named insured as their interests may appear.

In the event of loss, the concessionaire shall use all proceeds of such insurance to repair, rebuild, restore, or replace concession facilities and personal property used in the concessionaire's operations under this concession contract as directed by Reclamation. Policies may not contain provisions limiting insurance proceeds to in situ replacement. The lien provision of section 7 G shall apply to such insurance proceeds. The concessionaire shall not be relieved of its obligations because insurance proceeds are not sufficient to repair or replace damaged or destroyed property.

Insurance policies that cover concession facilities shall contain a loss payable clause approved by Reclamation that requires insurance proceeds to be paid directly to the concessionaire without requiring endorsement by the United States. The use of insurance proceeds for repair or replacement of concession facilities will not alter their character as properties of the United States. Notwithstanding any provision of this concession contract to the contrary, the concessionaire shall gain no ownership or other compensable interest as a result of the use of these insurance proceeds. The concessionaire's CIR, if any, will be limited to the value which the concessionaire would otherwise have obtained less any costs to the Government necessitated by the use of insurance to repair or replace concession facilities.

The commercial property package shall include the coverage and amounts described in exhibit I.

F. BONDS

Reclamation may require the concessionaire to furnish appropriate forms of bonds in amounts reasonable in the circumstances and acceptable to Reclamation to ensure faithful performance of the concessionaire's obligations under this concession contract. At the discretion of Reclamation, a surety or performance bond by the concessionaire may be requested at any time.

The concessionaire shall be required to furnish a contractor's completion bond or other insurance acceptable to Reclamation in connection with the construction of improvements, including but not limited to the CFIP and those projects undertaken using funds from the RAFL, required under this concession contract.

[If applicable details on required bonds will be entered in this section as a part of the final negotiations with a successful offeror]

G. LIEN

As additional security for the faithful performance by the concessionaire of its obligations under this concession contract and the payment to the Government of all damages or claims that may result from the concessionaire's failure to observe any such obligations,

the Government shall have at all times the first lien on all assets of the concessionaire within the (Name of Concession Area) Concession Area, including, but not limited to, all personal property of the concessionaire used in performance of the concession contract hereunder within the (Name of Concession Area) Concession Area and any CIR of the concessionaire.

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SECTION 8 – ACCOUNTING RECORDS AND REPORTS

A. ANNUAL FINANCIAL REPORTS AND ACCOUNTING SYSTEM

The concessionaire shall maintain a financial accounting system under which its accounts can be readily identified with its system of accounts classification. Such an accounting system shall be capable of providing the information required by this concession contract, including, but not limited to, the concessionaire's RAFI obligations. The concessionaire's system of accounts classification shall use, without exception and without modification, the concessionaire annual financial report forms issued by Reclamation in exhibit J in this concession contract.

If the concessionaire's annual gross receipts are \$250,000 or more, the concessionaire must use the accrual accounting method. If annual gross receipts are less than \$250,000, the financial statements may be prepared without involvement of an independent certified public accountant (CPA), unless otherwise directed by Reclamation.

In computing net profits for any purposes of this concession contract, the concessionaire shall keep its accounts in such manner that there can be no diversion or concealment of profits or expenses in the operations authorized under this concession contract by means of arrangements for the procurement of equipment, merchandise, supplies, or services from sources controlled by or under common ownership with the concessionaire or by any other device including, but not limited to, management fees.

The concessionaire shall submit annually, as soon as possible but not later than 120 days after the last day of its fiscal year, a financial statement for the preceding fiscal year or portion of a year, as prescribed by Reclamation in the Financial Reporting Form in exhibit J. The concessionaire shall use the forms and format prescribed in exhibit J.

If the annual gross receipts of the concessionaire are in excess of \$1,000,000, the financial statements shall be audited by an independent CPA in accordance with Generally Accepted Auditing Standards and procedures promulgated by the American Institute of Certified Public Accountants (AICPA).

If annual gross receipts are between \$250,000 and \$1,000,000, the financial statements shall be reviewed by an independent CPA in accordance with Generally Accepted Auditing Standards and procedures promulgated by the AICPA.

B. BALANCE SHEET

Within 90 days after the execution of this concession contract or its effective date, whichever is later, the concessionaire shall submit to Reclamation a balance sheet [Schedule B of Exhibit J] as of the beginning date of the term of this concession contract. The balance sheet shall be audited or reviewed, as determined by the annual gross receipts, by an independent CPA. The balance sheet shall be accompanied by a schedule that identifies and provides details for all capital improvements in which the

concessionaire claims a CIR. The schedule (Schedule M, “Capital Investment Recovery Assets”) must describe these capital improvements in detail and show, for each such capital improvement, the date acquired, constructed, or installed and a separate itemization of labor costs and equipment costs, without alteration and without modification, as provided in exhibit J.

C. OTHER REPORTING REQUIREMENTS

The following describes certain other reports required under this concession contract:

1. Reserve Account Reconciliation

The reserve account reconciliation shall be received by Reclamation within 15 days after the last day of each month that the concessionaire operates. The concessionaire is required to follow the monthly RAFI activity report form in exhibit K without alteration and without modification. The concessionaire shall submit annually, not later than 120 days after the end of the concessionaire’s accounting year, a statement reflecting total activity in the RAFI for the preceding accounting year. The concessionaire is required to follow the Reserve Account Annual Reconciliation Schedule, Schedule N in exhibit J, without alteration and without modification.

2. Insurance Certification

The concessionaire shall, at the request of Reclamation, provide Reclamation with a Certificate of Insurance for all insurance coverage related to its operations under this concession contract. The concessionaire shall give Reclamation immediate written notice of any material change in its insurance program, including without limitation, any cancellation of required insurance coverage.

3. Environmental and Risk Management Reporting

The concessionaire shall submit environmental and risk management reports as specified in section 3 of this concession contract and including, but not limited to, exhibit M, and as otherwise required by Reclamation under the terms of this concession contract.

4. Miscellaneous Reports and Data

Reclamation, from time to time, requires the concessionaire to submit other reports and data regarding its performance under the concession contract or otherwise, including, but not limited to, the Recreation Use Data Report and the Concession Use Data Report.

SECTION 9 – GENERAL PROVISIONS

A. ACCESS TO RECORDS

Reclamation and Comptroller General of the United States, or any of their duly authorized representatives, shall have access to the records of the concessionaire as provided by the terms of applicable laws.

B. PUBLIC RELEASE OF INFORMATION

Reclamation requires that all information to be submitted by the concessionaire pursuant to this concession contract be subject to public release by Reclamation to the extent provided by applicable laws.

C. NO SUB-CONCESSIONS

Sub-concessions or other third party agreements, including management agreements, for the provision of visitor services required under this concession contract are not permitted.

D. NON-ENTITLEMENT FOR FEDERAL PROCUREMENT PROCESS OR SERVICE

The concessionaire is not entitled to be awarded or to have negotiating rights to any Federal procurement or service contract by virtue of any provision of this concession contract.

E. PAYMENT OF TAXES

All taxes or assessments of any nature that may be lawfully imposed by any State or its political subdivisions upon the property or business of the concessionaire shall be paid promptly by the concessionaire.

F. POLITICAL INFLUENCE AND CONFLICT OF INTEREST

No member of the judicial, legislative, or executive branches of the United States Government shall be admitted to any share or part of this concession contract or to any benefit that may arise from this concession contract, but this restriction shall not be construed to extend to this concession contract if made with a corporation or company for its general benefit.

G. DEBARMENT AND SUSPENSION

This concession contract is subject to the provisions of 43 CFR; Subtitles A and B, concerning non-procurement debarment and suspension. Reclamation may recommend that the concessionaire be debarred or suspended in accordance with the requirements and procedures described in those regulations as they are in effect now or may be revised in the future.

H. AMENDMENTS

This concession contract contains the sole and entire agreement of the parties. No oral representations of any nature form the basis of or may amend this concession contract. This concession contract may be amended only in very unusual circumstances when agreed to in writing by Reclamation and the concessionaire.

I. THIRD PARTIES

This concession contract does not grant rights or benefits of any nature to any third party.

J. VALIDITY OF PROVISIONS

The invalidity of a specific provision of this concession contract shall not affect the validity of the remaining provisions of this concession contract.

K. WAIVERS

A waiver by Reclamation or the concessionaire of any breach of any of the terms of this concession contract by the other party shall not be deemed to be a waiver or elimination of such terms or of any subsequent breach of the same type or of any other term of the concession contract. The subsequent acceptance of any payment of money or other performance required by this concession contract shall not be deemed to be a waiver of any preceding breach of any term of the concession contract.

L. CORRUPTION AND FRAUD

Claims against Reclamation (to the extent subject to 28 U.S.C. 2514) arising from this concession contract shall be forfeited to Reclamation by any person who corruptly practices or attempts to practice any fraud against the United States in the proof, statement, establishment, or allowance thereof within the meaning of 28 U.S.C. 2514.

M. REQUIRED REPORTS, DOCUMENTS, AND DATA

The concessionaire shall supply to Reclamation all reports, documents, and data required by this concession contract in accordance with Reclamation Manual Policy and Directives and Standards.

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IN WITNESS WHEREOF, the duly authorized representatives of the parties have executed this concession contract as of the _____ day of _____, 20____.

CONCESSIONAIRE

UNITED STATES OF AMERICA

By: _____ By: _____

Title: _____

Company Name: _____

Bureau of Reclamation

CORPORATIONS ATTEST

By: _____

Title: _____

SOLE PROPRIETORSHIP

Witnesses: _____

Name: _____

Address: _____

Title: _____

Name: _____

Address: _____

Title: _____

PARTNERSHIP

CONCESSIONAIRE

Witnesses as to each:

Name: _____

Address: _____

(Signature)

Name: _____

Address: _____

(Signature)

EXHIBITS TO THE CONTRACT

| | |
|-----------|--|
| Exhibit A | Nondiscrimination and Accessibility |
| Exhibit B | Area of Operation and Assigned Land..... |
| Exhibit C | Capital Investment Recovery |
| Exhibit D | Authorized Reclamation and Concessionaire Improvements |
| Exhibit E | Assigned Government Property and Livestock |
| Exhibit F | Maintenance Plan..... |
| Exhibit G | Operating Plan |
| Exhibit H | Improvement Project Procedures..... |
| Exhibit I | Insurance Requirements..... |
| Exhibit J | Financial Reporting Forms |
| Exhibit K | Reserve Account for Facilities Improvement |
| Exhibit L | Reclamation Manual Policy and Directives and Standards |
| Exhibit M | Risk Management |
| Exhibit N | Gift Shop Merchandising Plan..... |
| Exhibit O | Environmental Management Program |